

To: Martin Hayden[mhayden@earthjustice.org]
From: Ali, Mustafa
Sent: Fri 9/9/2016 8:21:21 PM
Subject: Re: Lisa Garcia and I

Marty,

I'm at an event in Georgia. I will be free around 5:30 pm - we can talk then if that will work for you?

Blessings
Mustafa

Sent from my iPhone

On Sep 9, 2016, at 4:18 PM, Martin Hayden <mhayden@earthjustice.org> wrote:

Mustafa,

Hope you are doing well. Lisa Garcia and I were just talking and I would like to ask you something – via phone – nothing that will require you to do any work.

I have a call at 4:30 but could call you right after. What would be the best number.

Thanks

Marty

202-745-5218

To: Lisa Garcia[lgarcia@earthjustice.org]
From: Ali, Mustafa
Sent: Wed 9/14/2016 2:56:06 PM
Subject: RE: Green Room tonight

Thanks Lisa I appreciate folks thinking of me. I look forward to seeing you tonight....

Blessings
Mustafa

-----Original Message-----

From: Lisa Garcia [mailto:lgarcia@earthjustice.org]
Sent: Wednesday, September 14, 2016 10:53 AM
To: Ali, Mustafa <Ali.Mustafa@epa.gov>
Subject: Green Room tonight

Hi there;
I hear you accepted our pitch to honor you at the Green Room. I came down just for today - and will see you tonight. Congrats and so well deserved!!
Lisa

Sent from my iPhone

To: Allie Sheffield [Ex. 6 - Personal Privacy]
Cc: ejstrategy[ejstrategy@epa.gov]; Minter, Marsha[Minter.Marsha@epa.gov]; Ayo Wilson [Ex. 6 - Personal Privacy]; Patricia White [Ex. 6 - Personal Privacy]; North Carolina Environmental Justice Network [Ex. 6 - Personal Privacy]; Marilyn Marsh-Robinson [Ex. 6 - Personal Privacy]; Sacoby Wilson [Ex. 6 - Personal Privacy]; vbitting@sercap.org[vbitting@sercap.org]; kedesch.altidor@hhs.gov[kedesch.altidor@hhs.gov]; Don Cavellini [Ex. 6 - Personal Privacy]; Epps-Price, Lena[Epps-Price.Lena@epa.gov]; [Ex. 6 - Personal Privacy]; mercedes.hernandez-pelletier@dhhs.nc.gov[mercedes.hernandez-pelletier@dhhs.nc.gov]; Jones, LaShandra [Jones.Lashandra@epa.gov]; [Ex. 6 - Personal Privacy]; [Ex. 6 - Personal Privacy]; Pourifoy, Cynthia[Pourifoy.Cynthia@epa.gov]; Fawn Pattison [Ex. 6 - Personal Privacy]; Tarver, Siobhan[Tarver.Siobhan@epa.gov]; [Ex. 6 - Personal Privacy]; Omari Wilson[omari@landloss.org]; Steve Wing [Ex. 6 - Personal Privacy]; Belinda Joyner [Ex. 6 - Personal Privacy]; Ericka Faircloth[ericka@cwfn.org]; Hope Taylor[hope@cwfn.org]; Devon Hall [Ex. 6 - Personal Privacy]; Yolanda Anderson [Ex. 6 - Personal Privacy]; [Ex. 6 - Personal Privacy]; Evon Connally [Ex. 6 - Personal Privacy]; [Ex. 6 - Personal Privacy]; Patricia Torain [Ex. 6 - Personal Privacy]; David Caldwell [Ex. 6 - Personal Privacy]; robert campbell [Ex. 6 - Personal Privacy]; [Ex. 6 - Personal Privacy]; Chris Heaney [Ex. 6 - Personal Privacy]; hughes3@niehs.nih.gov[hughes3@niehs.nih.gov]; Savi Horne[savi@landloss.org]; Lee, Charles[Lee.Charles@epa.gov]; Kojo Wilson [Ex. 6 - Personal Privacy]; Hawley Truax[hawleyt@zsr.org]; steve.fischbach [Ex. 6 - Personal Privacy]; mengelmanlado@earthjustice.org[mengelmanlado@earthjustice.org]; leslie.fields@sierraclub.org[leslie.fields@sierraclub.org]; [Ex. 6 - Personal Privacy]; Michelle Nowlin [Ex. 6 - Personal Privacy]; John Griffin[griffin@reospartners.com]; Tennessee, Denise[Tennessee.Denise@epa.gov]
From: Ali, Mustafa
Sent: Fri 3/11/2016 4:28:29 PM
Subject: Re: Titan Cement drops plans for cement plant in NC!!

Allie & NC EJ Stakeholder Family,

Congrats to everyone on making your voices heard and your transformative vision for a healthier and more equitably sustainable community a reality. As you move forward in your planning, I look forward to finding ways to support your revitalization efforts.

Blessings
Mustafa Santiago Ali

Sent from my iPhone

On Mar 11, 2016, at 11:10 AM, Allie Sheffield [Ex. 6 - Personal Privacy] wrote:

I want to be sure that all of you know that Titan Cement officials announced yesterday that they are terminating their plans for the huge cement plant and limestone quarry in Castle Hayne, NC. So, we stopped Titan! All of us in the Wilmington area who have been fighting this for the past 7 years 11 months are in shock -- but it's giddy, happy shock. We really are euphoric. Of course Titan emphasized in its press release that the opposition to the plant had no impact whatsoever on their decision, but even their staunchest supporters know that's not true. Huge thanks and kudos to all of you who helped and supported us, we couldn't have done it without you! Special thanks to EPA's Mustafa Ali, Marsha Minter, Denise Tennessee,

Sioban Tarver and Cynthia Puerifoy for being there for us.

Fortunately, this fight has been transformative for Wilmington and southeastern North Carolina. Folks have had to think about what future they want for this area, and a vast majority have concluded that it should not include more heavy industry. (We already have a lot of heavy industry.) We fought this heavy polluter off and now we hope & expect to change New Hanover County planning rules to prohibit additional heavy polluters. And this community will never again just sit by passively and let the powers that be get away with what they've been getting away with. Southeastern North Carolina will never be the same, and that's a very good thing.

Many people (up from about 3 people) here now know about Environmental Justice and understand how widespread and devastating environmental injustice is in southeastern North Carolina. One of the highlights of the last 7 years and 11 months has been the support we've received from the EPA, especially the November 2015 site visit of 8 EJ folks from EPA Region 4, after NC DENR/DEQ repeatedly told us that EJ does not apply to North Carolina. Stop Titan coalition members NC Coastal Federation, Cape Fear River Watch, NC Sierra Club & PenderWatch & Conservancy along with the NAACP & REACH formed the Southeastern NC EJ Coalition in 2014, so we will have that going forward.

Again, thanks to every one of you for your support. When Titan announced in April, 2008 that it would build the cement plant, it said it would be operational by December, 2013, and bragged that it was a "fait accompli." Wrong, Titan. This is proof of the power of organizing.

Best,

Allie

Carolinas Cement website: <http://www.carolinascement.com/>

StarNews

article: <http://www.starnewsonline.com/article/20160310/ARTICLES/160319981/1177?Title=Titan-America-ends-effort-to-build-Castle-Hayne-cement-plant>

TITAN PULLS PLUG ON PLAN FOR \$450 MILLION CEMENT PLANT (Triangle Business Journal) - The project, however, had become controversial almost immediately after it was announced as some New Hanover residents formed opposition groups to protest any pollution and destruction of wetlands that the plant's construction and operation might cause.

<http://www.bizjournals.com/triangle/news/2016/03/10/titan-america-cement-plant-castle-hayne.html>

OPPONENTS OF PROJECT DECLARE VICTORY (WQHR-FM) - When news of a cement plant coming to Castle Hayne broke nearly eight years ago, it galvanized environmentalists into a force that became known as the Stop Titan Action Network.

<http://whqr.org/post/titan-cement-pulls-plug-new-facility-castle-hayne-opponents-project-declare-victory#stream/0>

LOCAL GROUPS HAPPY WITH PLAN TO DROP CEMENT PLANT (Port City Daily) -- Local environmental groups are declaring a win for area citizens after manufacturing company Titan America announced Thursday that they were suspending plans to build a cement plant in Castle Hayne.

<http://portcitydaily.com/2016/03/11/local-environmental-groups-happy-with-titan-announcement/> (Sierra Club Mention)

TITAN ABANDONS PLANS FOR CASTLE HAYNE CEMENT PLANT (Lumina News) -- The company said the economics behind building the plant did not support the high cost of construction. Meanwhile, environmental groups hailed the decision as a victory for those who fought construction of the plant on concerns over pollution.

<http://luminanews.com/2016/03/titan-abandons-plans-for-castle-hayne-cement-plant/> (Sierra Club Mention)

TITAN DROPS PLANS FOR CASTLE HAYNE CEMENT PLANT (Wilmington Business Journal) - A company that has been at the heart of an economic development controversy for several years has decided not to pursue its plans to build a facility in New Hanover County.

http://www.wilmingtonbiz.com/more_news/2016/03/10/titan_drops_plans_for_castle_hayne_ce
(Sierra Club mention)

OPPONENTS CELEBRATE TITAN DECISION (Coastal Review Online) -- Longtime opponents cheered Titan America's announcement yesterday that the company was dropping its controversial plans for a cement plant near Wilmington but the news was a disappointment for those who saw the project as needed economic investment.

<http://www.coastalreview.org/2016/03/13416/>

To: Lisa Garcia[lgarcia@earthjustice.org]
From: Ali, Mustafa
Sent: Sat 2/27/2016 3:18:34 AM
Subject: RE: Just getting around to your message!!

Lisa,

I know you would if you could. There is a lot going on and everyone is doing well so far. If your schedule allows you should come down during "Earth Week" I have a few interesting things happening that week but you know me well, so I'm sure you can imagine what I have up my sleeve. Lol

Have a safe trip to San Fran and hope to see you soon :)

Blessings
Mustafa

-----Original Message-----

From: Lisa Garcia [mailto:lgarcia@earthjustice.org]
Sent: Friday, February 26, 2016 7:55 PM
To: Ali, Mustafa <Ali.Mustafa@epa.gov>
Subject: Re: Just getting around to your message!!

I'm in San Fran for a Board meeting. Sorry You know I would help you any way I can!!!

I really need to plan a day to come visit all of you. I think in April I can come visit EPA.
Hope you are well .
Talk soon,
Lisa

Sent from my iPhone

> On Feb 26, 2016, at 7:49 PM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:
>
> March 10th at the Metro City Marriott in Washington DC.
>
> Sent from my iPhone
>
>> On Feb 26, 2016, at 7:15 PM, Lisa Garcia <lgarcia@earthjustice.org> wrote:
>>
>> Sorry. What is the date and where?
>>
>> Sent from my iPhone
>

To: Lisa Garcia[lgarcia@earthjustice.org]
From: Ali, Mustafa
Sent: Sat 2/27/2016 12:49:20 AM
Subject: Re: Just getting around to your message!!

March 10th at the Metro City Marriott in Washington DC.

Sent from my iPhone

> On Feb 26, 2016, at 7:15 PM, Lisa Garcia <lgarcia@earthjustice.org> wrote:
>
> Sorry. What is the date and where?
>
> Sent from my iPhone
>

From: Lisa Garcia
Importance: Normal
Subject: Mustafa Ali
Start Date/Time: Thur 5/22/2014 6:00:00 PM
End Date/Time: Thur 5/22/2014 7:00:00 PM

;

To: wtome@rabengroup.com[wtome@rabengroup.com]; Oliver Wells[owells@rabengroup.com]; danielle.deane-ryan@ee.doe.gov[danielle.deane-ryan@ee.doe.gov]; lgonzalez@rabengroup.com[lgonzalez@rabengroup.com]; jkent@rabengroup.com[jkent@rabengroup.com]; Angela Park[Ex. 6 - Personal Privacy]; d.chen@fordfoundation.org[d.chen@fordfoundation.org]; rriviera@nheec1.org[rriviera@nheec1.org]; Alex Przybelski[aprzybelski@rabengroup.com]; patrice webb[Ex. 6 - Personal Privacy]; Quentin James[Ex. 6 - Personal Privacy]; Mk Dorsey[mkdorsey@professordorsey.com]; Leslie Fields[leslie.fields@sierraclub.org]; Kim Noble[Ex. 6 - Personal Privacy]; Jose Gonzalez[jgonzalez@latinooutdoors.org]; jlwhite-newsome@kresge.org[jlwhite-newsome@kresge.org]; Tracy Russ[tracy@solid.today]; [Ex. 6 - Personal Privacy]; Mark Magana[Ex. 6 - Personal Privacy]; ignacia@imorenogroup.com[ignacia@imorenogroup.com]; GreenInternal[greeninternal@rabengroup.com]; clopez@earthjustice.org[clopez@earthjustice.org]; ctsmith@audubon.org[ctsmith@audubon.org]; Kim Noble[kim@greenforall.org]; [Ex. 6 - Personal Privacy]; Robert Avruch[ravruch@rabengroup.com]; [Ex. 6 - Personal Privacy]; michael.regan[Ex. 6 - Personal Privacy]; ewest@rabengroup.com[ewest@rabengroup.com]; Patrice Simms[Ex. 6 - Personal Privacy]; smaddinsmith@acha.org[smaddinsmith@acha.org]; sabibbins@kresge.org[sabibbins@kresge.org]; abeverly@uchicago.edu[abeverly@uchicago.edu]; shawntera.hardy@state.mn.us[shawntera.hardy@state.mn.us]; Ali, Mustafa[Ali.Mustafa@epa.gov]; bwadhwa@thegef.org[bwadhwa@thegef.org]; [Ex. 6 - Personal Privacy]

Subject: Updated Invitation: Green 2.0 Working Group - Monthly Calls @ Wed Oct 5, 2016 2pm - 3pm (EDT) (wtome@rabengroup.com)
invite.ics

This event has been changed.

[more details »](#)

Green 2.0 Working Group - Monthly Calls

When **Changed:** Wed Oct 5, 2016 2pm – 3pm Eastern Time

Where [Ex. 6 - Personal Privacy] Mtg Room A at 1341 G St, NW, 5th Floor, Washington, DC ([map](#))

Video call https://plus.google.com/hangouts/_/rabengroup.com/wtome

Calendar wtome@rabengroup.com

Who • wtome@rabengroup.com - organizer

- Oliver Wells
- danielle.deane-ryan@ee.doe.gov
- lgonzalez@rabengroup.com
- jkent@rabengroup.com
- Angela Park
- d.chen@fordfoundation.org
- rriviera@nheec1.org
- Alex Przybelski

- patrice webb
- Quentin James
- Mk Dorsey
- Leslie Fields
- Kim Noble
- Jose Gonzalez
- jlwhite-newsome@kresge.org
- Tracy Russ

Ex. 6 - Personal Privacy

- Mark Magana
- ignacia@imorenogroup.com
- GreenInternal
- clopez@earthjustice.org
- ctsmith@audubon.org
- Kim Noble

Ex. 6 - Personal Privacy

- Robert Avruch
- iask@bellsouth.net

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

- ewest@rabengroup.com
- Patrice Simms
- smaddinsmith@acha.org
- sabibbins@kresge.org

Ex. 6 - Personal Privacy

- shawntera.hardy@state.mn.us
- ali.mustafa@epa.gov
- bwadhwa@thegef.org

Ex. 6 - Personal Privacy

Going? **Yes** - **Maybe** - **No** more options »

Invitation from [Google Calendar](#)

You are receiving this courtesy email at the account ali.mustafa@epa.gov because you are an attendee of this event.

To stop receiving future updates for this event, decline this event. Alternatively you can sign up for a Google account at <https://www.google.com/calendar/> and control your notification settings for your entire calendar.

Forwarding this invitation could allow any recipient to modify your RSVP response. [Learn More](#).

19700308T020000

PRODID

-//Google Inc//Google Calendar 70.9054//EN

Version

2.0

CALSCALE

GREGORIAN

METHOD

REQUEST

TZID

America/New_York

X-LIC-LOCATION

America/New_York

TZOFFSETFROM

-0500

TZOFFSETTO

-0400

TZNAME

EDT

Start Date/Time

19700308T020000

Recurrence Rule

FREQ=YEARLY;BYMONTH=3;BYDAY=2SU

19701101T020000

TZOFFSETFROM

-0400

TZOFFSETTO

-0500

TZNAME

EST

Start Date/Time

19701101T020000

Recurrence Rule

FREQ=YEARLY;BYMONTH=11;BYDAY=1SU

Green 2.0 Working Group - Monthly Calls

Ex. 6 - Personal Privacy | Mtg Room A at 1341 G St, NW, 5th

Floor \, Washington, DC

20161005T140000

CONFIRMED

Start Date/Time

20161005T140000

End Date/Time

20161005T150000

DTSTAMP

20160919T173830Z

ORGANIZER (CN=wtome@rabengroup.com)

mailto:wtome@rabengroup.com

UID

gk69jlgoinuhoof3kgmvrkstoc_R20160622T180000@google.com

Attendee mailto:owells@rabengroup.com

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:danielle.deane-ryan@ee.doe.gov

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:lgonzalez@rabengroup.com

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:jkent@rabengroup.com

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:wtome@rabengroup.com

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:angelapk@gmail.com

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:d.chen@fordfoundation.org

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:rrivera@nheec1.org

Role REQ-PARTICIPANT
RSVP TRUE

Attendee	<u>mailto:aprzybelski@rabengroup.com</u>
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:</u> Ex. 6 - Personal Privacy
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:</u> Ex. 6 - Personal Privacy
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:mkdorsey@professordorsey.com</u>
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:leslie.fields@sierraclub.org</u>
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:</u> Ex. 6 - Personal Privacy
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:jgonzalez@latinooutdoors.org</u>
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:jlwhite-newsome@kresge.org</u>
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:tracy@solid.today</u>
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:</u> Ex. 6 - Personal Privacy
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:</u> Ex. 6 - Personal Privacy
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:ignacia@imorenogroup.com</u>
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:greeninternal@rabengroup.com</u>
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:clopez@earthjustice.org</u>
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee	<u>mailto:ctsmith@audubon.org</u>
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:kim@greenforall.org</u>
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:dhope@alum.rpi.edu</u>
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:ravruch@rabengroup.com</u>
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:</u> Ex. 6 - Personal Privacy
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:michael.regan</u> Ex. 6 - Personal Privacy
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:</u> Ex. 6 - Personal Privacy
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:ewest@rabengroup.com</u>
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:</u> Ex. 6 - Personal Privacy
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:smaddinsmith@acha.org</u>
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:sabibbins@kresge.org</u>
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:abeveryly@uchicago.edu</u>
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:shawntera.hardy@s tate.mn.us</u>
Role	REQ-PARTICIPANT
RSVP	TRUE
Attendee	<u>mailto:ali.mustafa@epa.gov</u>
Role	REQ-PARTICIPANT
RSVP	TRUE

Attendee mailto:bwadhwa@thegef.org
Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:Ex. 6 - Personal Privacy
Role REQ-PARTICIPANT
RSVP TRUE

RECURRENCE-ID (TZID=America/New_York)
20160928T140000

CREATED
20160513T103041Z

Description

This event has a Google Hangouts video call.
Join: https://plu.s.google.com/hangouts/_/rabengroup.com/wtome?hceid=d3RvbWVAcmFiZW5ncm91cC5jb20.gk69jlgoinuhoof3kgmvrkstoc&hs=121

View your event at https://www.google.com/calendar/event?action=VIEW&eid=Z2s2OWpsZ29pbmVob29mM2tnbXZya3N0b2NfMjAxNjA5MjhUMTgwMDAwWiBhbGkubXVzdGFmYUBlcGEuZ292&tok=MjAjd3RvbWVAcmFiZW5ncm91cC5jb20wODQwY2NINDM3OThhMzAxY2UzNDVhMWEyNjg1YjNmNGQ4M2lyZDMw&ctz=America/New_York&hl=en.

Last Modified
20160919T173829Z

Location
Ex. 6 - Personal Privacy Mtg Room A at 1341 G St, NW, 5th Floor \, Washington, DC

Sequence Number
2

Status
CONFIRMED

Summary
Green 2.0 Working Group - Monthly Calls

Time Transparency
OPAQUE

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Martin Hayden
Sent: Fri 9/9/2016 8:18:23 PM
Subject: Lisa Garcia and I

Mustafa,

Hope you are doing well. Lisa Garcia and I were just talking and I would like to ask you something – via phone – nothing that will require you to do any work.

I have a call at 4:30 but could call you right after. What would be the best number.

Thanks

Marty

Ex. 6 - Personal Privacy

To: White, Sherri[White.Sherri@epa.gov]; Muriel, Jasmin[Muriel.Jasmin@epa.gov]
Cc: Ali, Mustafa[Ali.Mustafa@epa.gov]; tejeda.matthew@epa.gov[tejeda.matthew@epa.gov]
From: Rita Harris
Sent: Wed 3/4/2015 6:46:36 PM
Subject: NEJAC Membership 2015
[NEJAC member-nomination-form-tmpl.doc](#)
[Brannon Letter for Rita Harris 2015 \(1\).pdf](#)
[Don Richardson RefLetter.pdf](#)
[RH Resume 2012.pdf](#)
[EarthMatters Reference.pdf](#)

NEJAC MEMBERSHIP 2015 -

Please see the attached application form, resume, and reference letters for Rita Harris as she applies for membership in the EPA NEJAC 2015.

Thanks for the opportunity to apply.

Rita

Rita Harris, Senior Organizing Representative
Sierra Club
2600 Poplar Avenue #216
Memphis, TN 38112
Phone: 901-324-7757

Ex. 6 - Personal Privacy

"We think of ourselves as separated from one another, yet we are connected and what we do affects the whole world. ~ Desmond Tutu

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Leslie Fields
Sent: Fri 4/15/2016 11:32:55 PM
Subject: Fwd: Invitation: Call with MI and national Sierra Club & Micah Ragland on Flint @ Mon Apr 18, 2016 1pm - 2pm
[invite.ics](#)

Hi Mustafa

So sorry for the late notice but would it be possible for you to join this call on Monday with our MI and national Sierra Club staff? Thanks, Leslie

Call with Locals on Flint

Call Agenda

- EPA overview on Flint grassroots efforts
 - EPA overview on water sampling efforts in Flint
 - Overview of Top 5 issues EPA field representatives receive most community feedback on
 - Sierra Club Q&A and Overview of their efforts in Flint
- When* Mon Apr 18, 2016 1pm – 2pm Eastern Time

Where Conference Call Number: **Ex. 6 - Personal Privacy** [\(map\)](#)

Who • ragland.micah@epa.gov - organizer

• Dalal Aboulhosn - creator

• Antoniewicz, Mark T. EOP/CEQ

• Ali, Mustafa

• david@davidholtz.org

Ex. 6 - Personal Privacy

• alison.horton@sierraclub.org

Ex. 6 - Personal Privacy

• laurie.williams@sierraclub.org

• rhonda.anderson@sierraclub.org

• leslie.fields@sierraclub.org

• dean.hubbard@sierraclub.org

• shelly.campbell@sierraclub.org

• m-keeler@sbcglobal.net

Invitation from Google Calendar

You are receiving this courtesy email at the account leslie.fields@sierraclub.org because you are an attendee of this event.

--

Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

Call with Locals on Flint

Conference Call Number:

Ex. 6 - Personal Privacy

Conference Code:

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

CONFIRMED

PRODID

Ex. 6 - Personal Privacy

Version

2.0

CALSCALE

GREGORIAN

METHOD

REQUEST

Start Date/Time

20160418T170000Z

End Date/Time

20160418T180000Z

DTSTAMP

20160415T185226Z

ORGANIZER (CN=ragland.micah@epa.gov)

mailto:ragland.micah@epa.gov

UID

040000008200E00074C5B7101A82E0080000000F0F4F580FD96D1010000000000000000
01000000003C58EACB5E0AB948AD456790BD6429F7

Attendee mailto:mark t antonie wicz@ceq.eop.gov

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:dalal.aboulhosn@sierraclub.org

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:ali.mustafa@epa.gov

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:david@davidholtz.org

Role REQ-PARTICIPANT
RSVP TRUE

Attendee mailto:Ex. 6 - Personal Privacy

Role REQ-PARTICIPANT

RSVP TRUE

Attendee mailto:alison.horton@sierraclub.org

Role REQ-PARTICIPANT

RSVP TRUE

Attendee mailto: Ex. 6 - Personal Privacy

Role REQ-PARTICIPANT

RSVP TRUE

Attendee mailto:laurie.williams@sierraclub.org

Role REQ-PARTICIPANT

RSVP TRUE

Attendee mailto:rhonda.anderson@sierraclub.org

Role REQ-PARTICIPANT

RSVP TRUE

Attendee mailto:leslie.fields@sierraclub.org

Role REQ-PARTICIPANT

RSVP TRUE

Attendee mailto:dean.hubbard@sierraclub.org

Role REQ-PARTICIPANT

RSVP TRUE

Attendee mailto:shelly.campbell@sierraclub.org

Role REQ-PARTICIPANT

RSVP TRUE

Attendee mailto: Ex. 6 - Personal Privacy

Role REQ-PARTICIPANT

RSVP TRUE

CREATED

20160415T142352Z

Description

Call Agenda

- EPA overview on Flint grassroots efforts
- EPA overview on water sampling efforts in Flint
- Overview of Top 5 issues EPA field representatives receive most community feedback on
- Sierra Club Q&A and Overview of their efforts in Flint

Last Modified

20160415T153243Z

Location

Conference Call Number: Ex. 6 - Personal Privacy Conference Code: Ex. 6 - Personal Privacy

Sequence Number

1

Status

CONFIRMED

Summary

Call with Locals on Flint

Time Transparency

OPAQUE

X-MICROSOFT-CDO-ALLDAYEVENT

FALSE

X-MICROSOFT-CDO-APPT-SEQUENCE

1

X-MICROSOFT-CDO-BUSYSTATUS

TENTATIVE

X-MICROSOFT-CDO-IMPORTANCE

1

X-MICROSOFT-CDO-INSTTYPE

0

X-MICROSOFT-CDO-INTENDEDSTATUS

BUSY

X-MICROSOFT-CDO-OWNERAPPTID

Ex. 6 - Personal Privacy

X-MICROSOFT-DISALLOW-COUNTER

FALSE

To: Ragland, Micah[Ragland.Micah@epa.gov]
Cc: Antoniewicz, Mark T. EOP/CEQ[**Ex. 6 - Personal Privacy**] Ali,
Mustafa[Ali.Mustafa@epa.gov]
From: Dalal Aboulhosn
Sent: Fri 4/15/2016 6:56:23 PM
Subject: Re: Call with Locals on Flint

perfect.
thanks!

*Dalal Anne Aboulhosn
Senior Washington Representative
Sierra Club
202.675.6278*

On Fri, Apr 15, 2016 at 2:56 PM, Ragland, Micah <Ragland.Micah@epa.gov> wrote:

That is included in the last bullet point , we can move that to front end of the call if you like and start the call with you all's observations and work in Flint.

Sent from my iPhone

On Apr 15, 2016, at 2:52 PM, Dalal Aboulhosn <dalal.aboulhosn@sierraclub.org> wrote:

Do you mind if I edit and add to your agenda? I think our folks want the updates you are going to lay out, but are also hoping to tell you what they are seeing and what they think could be helpful.

*Dalal Anne Aboulhosn
Senior Washington Representative
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202.675.6278*

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<dalal.aboulhosn@sierraclub.org> wrote:

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David

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Senior Washington Representative
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202.675.6278*

On Fri, Apr 15, 2016 at 10:23 AM, Ragland, Micah <Ragland.Micah@epa.gov> wrote:

Call Agenda

- EPA overview on Flint grassroots efforts
- EPA overview on water sampling efforts in Flint
- Overview of Top 5 issues EPA field representatives receive most community feedback on
- Sierra Club Q&A and Overview of their efforts in Flint

To: Martin, KarenL[Martin.KarenL@epa.gov]
Cc: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Terry McGuire
Sent: Mon 10/6/2014 5:31:30 PM
Subject: Re: could you possibly meet with folks from MI & TX coming to testify on SSM around 3pm on Oct 6?

Hi Karen,
It will be me and the following folks -

Rita Harris: Sierra Club EJ Organizer from Memphis
Yudith Nieto: From t.e.j.a.s. in Houston
Elizabeth Milton and Theresa Landrum: Community activists from Detroit
Hilton Kelley: Community activist and Goldman Prize winner from Port Arthur, TX

The topic would be recently the reproposed SSM rule. All of the folks are in town to testify at the hearing tomorrow and wanted to quickly come by to express support for the rule and tell you a little about their experiences living in the shadows of these facilities.

Thanks very much, and let me know the room location. We'll be coming from the WJC West Building, Room 1117B.

Terry

On Mon, Oct 6, 2014 at 12:30 PM, Martin, KarenL <Martin.KarenL@epa.gov> wrote:

Hi Terry,

Mustafa is available to meet from 3:00 PM - 4:00 PM, on Tuesday October 7th. How many people will be attending the meeting? Can you also send me a list of attendees? It would also be helpful if you can provide a brief agenda highlighting the topics for discussion.

Building Security: The EPA building is similar to what you experience at the airport. All visitors need to bring a government-issued photo ID (i.e., a driver's license). You will be asked to show this ID as you enter the lobby. If you are from any of the following states you will need **two forms of ID**:

Alaska
Washington
Montana
Arizona
Oklahoma
Minnesota
Kentucky
Louisiana
New York
Massachusetts
Maine

Please arrive at the building 15 minutes before the meeting. The security screening process is similar to screening at the airport: you will be asked to walk through a magnetometer (removing metal objects from your pockets), and your coats, bags etc. will be x-rayed. After you pass through security, someone will be waiting to bring the group up to the second floor.

Thank You

Karen L. Martin

U.S. Environmental Protection Agency

Special Assistant to the Senior Advisor for Environmental Justice

Room 2226 G WJCS

202-564-0203 (Office)

From: Terry McGuire <terry.mcguire@sierraclub.org>

Sent: Monday, October 6, 2014 11:11 AM

To: Ali, Mustafa

Cc: Martin, KarenL

Subject: Re: could you possibly meet with folks from MI & TX coming to testify on SSM around 3pm on Oct 6?

Hi Karen, hi Mustafa -

Does something around 3pm work tomorrow? Our folks are testifying at the SSM hearing the first part of the day, but we should be done by noon or 1pm.

Thanks for getting back, and sorry on my end for the delay in replying.

Terry

On Thu, Oct 2, 2014 at 1:26 PM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:

Yes we can. Please lock down a time with Karen Martin who I have cc'd.

Mustafa Ali

Senior Advisor to the Administrator for Environmental Justice [Acting]

Sent from my iPhone

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Hi Mustafa,

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Thanks very much,

Terry

On Wed, Sep 24, 2014 at 12:59 PM, Leslie Fields <leslie.fields@sierraclub.org> wrote:

Thanks. Turns out the meeting will probably have to be Oct 7. My colleague Terry McGuire is copied because he's graciously handling the logistics. Thanks, Leslie

On Wed, Sep 24, 2014 at 11:59 AM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:

Leslie,

I will definitely try. I'm on the road working on some diesel issues at the moment and will be back in DC late tonight. I know I have to be in Cali that week, so I need to see if I can move some things around and if not who we can get to talk with folks.

Blessings

Mustafa Ali

Senior Advisor to the Administrator for Environmental Justice [Acting]

Sent from my iPhone

On Sep 23, 2014, at 6:07 PM, "Leslie Fields" <leslie.fields@sierraclub.org> wrote:

Hi Mustafa

I hope you're well. I'm recovering from the NYC Climate rally. We've got folks coming to testify on the SSM rule on Oct 6. Would it be possible for you to meet with them to tell what else the EPA is doing on it re: EJ? thanks, Leslie

Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
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Terry McGuire
Washington Representative
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202-495-3045

--

Terry McGuire
Washington Representative
Sierra Club

Ex. 6 - Personal Privacy

--

Terry McGuire
Washington Representative
Sierra Club

Ex. 6 - Personal Privacy

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Marianne Engelman Lado
Sent: Thur 8/18/2016 4:03:54 PM
Subject: Getting in Touch

Mustafa,

Hope you're well.

I tried to reach you at your office and by cell, but the mailbox was full on your cell phone.

Please feel free to let me know when you have a few minutes. I could call at the end of the day if that might work for you.

Best,

Marianne

Marianne Engelman Lado

Senior Staff Attorney

Earthjustice

48 Wall Street, 19th Floor

New York, NY 10005

T: 212.845.7393

F: 212.918.1556

earthjustice.org



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If you think that you have received this email message in error, please notify the sender by reply email and delete the message and any attachments.

To: rita.harris@sierraclub.org[rita.harris@sierraclub.org]; Tejada, Matthew[Tejada.Matthew@epa.gov]; Ali, Mustafa[Ali.Mustafa@epa.gov]; Lee, Charles[Lee.Charles@epa.gov]; Lewis, Sheila[Lewis.Sheila@epa.gov]
Cc: Peurifoy, Cynthia[Peurifoy.Cynthia@epa.gov]
From: King, Marva
Sent: Mon 3/2/2015 10:07:37 PM
Subject: Re: University of Memphis and Sierra Club Blog Post

Rita - looks like you had a great event! Glad Bob was there for you and your communities.

Thanks for sharing it with us here in OEJ headquarters!!

Peace,

Marva

Sent from my iPhone

On Mar 2, 2015, at 3:48 PM, "Rita Harris" <rita.harris@sierraclub.org> wrote:

FYI: Just sharing.

From: Rita Harris <rita.harris@sierraclub.org>
Date: Mon, Mar 2, 2015 at 2:30 PM
Subject: University of Memphis and Sierra Club Blog Post
To: Rita Harris <rita.harris@sierraclub.org>

Dear friends and colleagues,

I am pleased to announce and share the latest post of the Anthropology and Environment Society's blog, ENGAGEMENT: University of Memphis and the Sierra Club Team up to Promote Education, Advocacy & Activism at Grassroots Environmental Conference. The post, authored by Kathryn Hicks, Rita Harris, Keri Brondo, and Robert Marczynski, reports on the successes of a joint academic-activist environmental justice conference held annually in Memphis, TN.

ENGAGEMENT features compelling, first-hand accounts by anthropologists and other social scientists whose work directly addresses pressing social and environmental problems.

Please view the blog post here:

<http://www.aaanet.org/sections/ae/index.php/university-of-memphis-sierra-club-grassroots-environmental-conference/>

<http://www.aaanet.org/sections/ae/index.php/category/engagement-blog/>

Rita Harris, Senior Organizing Representative
Sierra Club
2600 Poplar Avenue #216
Memphis, TN 38112
Phone: 901-324-7757
Cell Phone: 901-497-5798

"We think of ourselves as separated from one another, yet we are connected
and what we do affects the whole world. ~ Desmond Tutu

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lisa Garcia
Sent: Wed 6/10/2015 9:30:09 PM
Subject: Contact info

Congrats on EJScreen!
So glad it finally came out!
Hope all else is well.

Do you recall the ej contact in EPA region 8 in Denver. Latino?

Arturo?totally forgetting all the people I used to work with. Want to recommend someone for a Utah - LULAC panel - Latinos and the environment

Any info would be really helpful.
Ciao
Lisa
Sent from my iPhone

To: Terry McGuire[terry.mcguire@sierraclub.org]; Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Martin, KarenL
Sent: Mon 10/6/2014 4:30:55 PM
Subject: Re: could you possibly meet with folks from MI & TX coming to testify on SSM around 3pm on Oct 6?

Hi Terry,

Mustafa is available to meet from 3:00 PM - 4:00 PM, on Tuesday October 7th. How many people will be attending the meeting? Can you also send me a list of attendees? It would also be helpful if you can provide a brief agenda highlighting the topics for discussion.

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Thank You

Karen L. Martin

U.S. Environmental Protection Agency

Special Assistant to the Senior Advisor for Environmental Justice

Room 2226 G WJCS

202-564-0203 (Office)

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Blessings

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Washington Representative
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Cc: Antoniewicz, Mark T. EOP/CEQ[Mark_T_Antoniewicz@ceq.eop.gov]; Ali, Mustafa[Ali.Mustafa@epa.gov]
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Sent: Fri 4/15/2016 6:52:02 PM
Subject: Re: Call with Locals on Flint

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202-495-3045

--

Terry McGuire
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Sierra Club
202-495-3045

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
Cc: Vernice Miller-Travis[vmiller-travis@skeo.com]; Deeohn Ferris[gerinc@mindspring.com]
From: Leslie Fields
Sent: Thur 10/16/2014 8:52:22 PM
Subject: Re: EJ Strategy Discussion

I can now only be on a call at 2pm tomorrow. thanks

On Thu, Oct 16, 2014 at 12:10 PM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:

It looks like only 1 person would have been available today. Do folks have any available time tomorrow for a brief conversation?

Blessings

Mustafa

From: Ali, Mustafa
Sent: Monday, October 13, 2014 3:53 PM
To: Vernice Miller-Travis; Deeohn Ferris; leslie. fields
Subject: EJ Strategy Discussion

Hi everyone,

I hope you had a blessed weekend and your Monday is going well. I wanted to see if you might have some time this Thursday for a strategy conversation. I wanted to see if folks might have time on Thursday at 11 am or 3 pm? If that doesn't work we can try for Friday.

Blessings
Mustafa Ali

Senior Advisor to the Administrator for Environmental Justice [Acting]

Sent from my iPhone

--

Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program

Sierra Club
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www.sierraclub.org/ejcp

To: Stephanie Maddin[smaddin@earthjustice.org]
Cc: Lisa Garcia[lgarcia@earthjustice.org]; Ali, Mustafa[Ali.Mustafa@epa.gov]; Emma Cheuse[echeuse@earthjustice.org]; Tejada, Matthew[Tejada.Matthew@epa.gov]
From: Lee, Charles
Sent: Mon 5/4/2015 10:09:09 PM
Subject: RE: EJ 2020 Draft Framework

Stephanie

Thanks much. I will be come by with Matt tomorrow. On the EJ 2020 call, we can do something on the week of May 25. I will need to do it in the morning, before 12 noon EST. I will be [REDACTED] **Ex. 6 - Personal Privacy** [REDACTED] The days available are May 26, 27, 28. We can figure this out tomorrow.

All the best

Charles

From: Stephanie Maddin [mailto:smaddin@earthjustice.org]
Sent: Monday, May 04, 2015 2:20 PM
To: Lee, Charles
Cc: Lisa Garcia; Ali, Mustafa; Emma Cheuse
Subject: RE: EJ 2020 Draft Framework

Hi Charles,

Just wanted to flag that we're having a meeting with Matt Tejada this week (I'll be out of pocket due Ex. 6 - Personal Privacy) and would welcome your participation or setting up an additional meeting to discuss the opportunity to engage on this important set of comments. Also, we need further internal vetting on how to set up a call with our partners and allies on the program and suspect a time after May 22nd would work best. We'd still have enough time to integrate feedback into community comments.

Our meeting with Matt is slated for: 5/5 1-3 PM

Very best,

Stephanie

From: Lee, Charles [<mailto:Lee.Charles@epa.gov>]
Sent: Monday, April 27, 2015 5:52 PM
To: Stephanie Maddin
Cc: Lisa Garcia; Ali, Mustafa
Subject: RE: EJ 2020 Draft Framework

Here is the EJ 2020 draft framework document. Forgot to attach it before

Charles

From: Stephanie Maddin [<mailto:smaddin@earthjustice.org>]
Sent: Monday, April 27, 2015 3:59 PM
To: Lee, Charles
Cc: Lisa Garcia; Ali, Mustafa
Subject: RE: EJ 2020 Draft Framework

Thanks so much for this information. I look forward to touching base internally and following up very soon!

From: Lee, Charles [<mailto:Lee.Charles@epa.gov>]
Sent: Monday, April 27, 2015 3:43 PM
To: Stephanie Maddin
Cc: Lisa Garcia; Ali, Mustafa
Subject: EJ 2020 Draft Framework

Stephanie

Great talking with you about EJ 2020 and Earthjustice helping to get your partners to engage with us on it. The informational webinars announcement (May 7, May 14) is below. In addition, a follow up conference call to focus on particular issues on May 15 sounds like a great idea. I would also be glad to come by Earthjustice to have a conversation with the Earthjustice staff if you think that would help as well. A copy of the announcement for the EJ 2020 national webinars is below.

Thanks

Charles

EPA Will Conduct National Webinars on Draft EJ 2020 Action Agenda Framework

May 7, 2015: 3:00 p.m. - 4:30 p.m. Eastern

May 14, 2015: 3:30 p.m. - 5:00 p.m. Eastern

The U.S. Environmental Protection Agency (EPA) is hosting two national webinars about the new draft [EJ 2020 Action Agenda framework](#) - EPA's next overarching strategic plan for environmental justice. The webinars are part of the Agency's efforts to engage as many stakeholders as possible on the new strategy to advance environmental justice through EPA's programs, policies and activities. EJ 2020 will support the cross-agency strategy on making a visible difference in environmentally overburdened, underserved, and economically-distressed communities. Stakeholders and the general public can review the framework and submit comments, from April 15, 2015 through June 15, 2015, by visiting www.epa.gov/environmentaljustice/ej2020.

The goals of EJ 2020 are to:

- Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities

- Collaborate with partners to expand our impact within communities

- Demonstrate progress on outcomes that matter to communities

"EJ 2020 will build on the foundation established by EPA's Plan EJ 2014, where we were able to improve on EJ in permitting, support community-based programs and develop science tools to access and facilitate grants," said Mustafa Santiago Ali, Senior Advisor to the Administrator on Environmental Justice. "Although we've made good progress, there's still more to do. We need to strategically identify opportunities for targeted collaboration that benefit overburdened communities. Your voices, experiences and expertise can help shape a strategy that addresses the needs of your communities." Read Mustafa Ali's [blog](#) for more about how EJ 2020 is about defining new goals for the coming years.

Registration: To access the webinars, please sign up at: <http://us-epa-draft-ej-2020-plan.eventbrite.com>.

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2201A)
William Jefferson Clinton Building South, Room 2226B
Tel: 202-564-2597
Fax: 202-564-1624

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To: Lee, Charles[Lee.Charles@epa.gov]
Cc: Lisa Garcia[lgarcia@earthjustice.org]; Ali, Mustafa[Ali.Mustafa@epa.gov]; Emma Cheuse[echeuse@earthjustice.org]
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Subject: EJ 2020 Draft Framework

Stephanie

Great talking with you about EJ 2020 and Earthjustice helping to get your partners to engage with us on it. The informational webinars announcement (May 7, May 14) is below. In addition, a follow up conference call to focus on particular issues on May 15 sounds like a great idea. I would also be glad to come by Earthjustice to have a conversation with the Earthjustice staff if you think that would help as well. A copy of the announcement for the EJ 2020 national webinars is below.

Thanks

Charles

EPA Will Conduct National Webinars on Draft EJ 2020 Action Agenda Framework

May 7, 2015: 3:00 p.m. - 4:30 p.m. Eastern
May 14, 2015: 3:30 p.m. - 5:00 p.m. Eastern

The U.S. Environmental Protection Agency (EPA) is hosting two national webinars about the new draft [EJ 2020 Action Agenda framework](#) - EPA's next overarching strategic plan for environmental justice. The webinars are part of the Agency's efforts to engage as many stakeholders as possible on the new strategy to advance environmental justice through EPA's programs, policies and activities. EJ 2020 will support the cross-agency strategy on making a visible difference in environmentally overburdened, underserved, and economically-distressed communities. Stakeholders and the general public can review the framework and submit comments, from April 15, 2015 through June 15, 2015, by visiting www.epa.gov/environmentaljustice/ej2020.

The goals of EJ 2020 are to:

- Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities
- Collaborate with partners to expand our impact within communities
- Demonstrate progress on outcomes that matter to communities

"EJ 2020 will build on the foundation established by EPA's Plan EJ 2014, where we were able to improve on EJ in permitting, support community-based programs and develop science tools to access and facilitate grants," said Mustafa Santiago Ali, Senior Advisor to the Administrator on Environmental Justice. "Although we've made good progress, there's still more to do. We need to strategically identify opportunities for targeted collaboration that benefit overburdened communities. Your voices, experiences and expertise can help shape a strategy that addresses the needs of your communities." Read Mustafa Ali's [blog](#) for more about how EJ 2020 is about defining new goals for the coming years.

Registration: To access the webinars, please sign up at: <http://us-epa-draft-ej-2020-plan.eventbrite.com>.

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2201A)
William Jefferson Clinton Building South, Room 2226B
Tel: 202-564-2597
Fax: 202-564-1624

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not print, copy, retransmit, disseminate, or otherwise use the information contained herein. Thank you.

To: Ragland, Micah[Ragland.Micah@epa.gov]
Cc: Antoniewicz, Mark T. EOP/CEQ[Mark_T_Antoniewicz@ceq.eop.gov]; Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Dalal Aboulhosn
Sent: Fri 4/15/2016 3:33:10 PM
Subject: Re: Call with Locals on Flint

Thank you. Can you add my folks to the invite?

David

*Dalal Anne Aboulhosn
Senior Washington Representative
Sierra Club
202.675.6278*

On Fri, Apr 15, 2016 at 10:23 AM, Ragland, Micah <Ragland.Micah@epa.gov> wrote:

Call Agenda

- EPA overview on Flint grassroots efforts

- EPA overview on water sampling efforts in Flint
- Overview of Top 5 issues EPA field representatives receive most community feedback on
- Sierra Club Q&A and Overview of their efforts in Flint

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Terry McGuire
Sent: Mon 9/21/2015 6:33:04 PM
Subject: Letter to the President: Mayors Support Strong Smog Protections
Mayors Smog Letter - FINAL COPY 9-21-2015.pdf

Hi Mustafa,

This letter was delivered today by the lead mayors, Becker of Salt Lake City and Heartwell of Grand Rapids. [Here is a blog post](#) from Becker's office that includes [this link](#) to a final copy, and [here is a release](#) from Heartwell's office. A final copy is also attached.

Thanks,

--

Terry McGuire
Washington Representative
Sierra Club
202-495-3045

September 21, 2015

President Barack Obama
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear President Obama,

As local elected officials representing big cities and small towns, we want to express our strong support for the Environmental Protection Agency's (EPA) work to update the ozone (or smog) standard. The current, George W. Bush-era standard of 75 parts per billion (ppb) has been widely acknowledged by the medical community as insufficient to protect public health. As mayors, we are on the front lines of protecting the safety and well-being of our constituents and this long-overdue update will reap tremendous benefits for our communities. To best guard our families and constituents from this dangerous pollutant, we urge EPA to stay true to the science and in setting the standard follow the guidance of expert medical organizations like the American Lung Association, the American Heart Association, the American Thoracic Society, and the American Academy of Pediatrics.

Smog pollution, much of it coming from power plant emissions and vehicle exhaust, represents a particularly widespread threat to families nationwide. According to the American Lung Association's 2014 State of the Air report, approximately 45% of the population – or 140.5 million people – live in counties that received a grade of "F" for their air pollution. This is especially problematic for sensitive populations such as children, the elderly, those with breathing ailments, outdoor workers, low-income families and communities of color. The Clean Air Act is clear in requiring EPA to set a standard not just protective of healthy individuals, but also protective of these vulnerable populations.

Nearly 26 million Americans, including 7 million children, suffer from asthma. According to the Centers for Disease Control and Prevention, minority children living in poor socio-economic conditions are at a greater risk. For instance, 16% of African American children had asthma in 2010, compared to 8.2% of White children. Low-income families are more likely to live close to sources of pollution and roadways, have lower access to medical information and health insurance, and die from asthma-related complications.

EPA's own analysis shows that the strongest option under consideration would save taxpayers as much as \$75.9 billion annually when fully implemented through lower health care costs. Each year, this would translate into as many as 7,900 lives saved and 1.8 million asthma attacks and 1.9 million missed school days avoided.

Clean, healthy air and water are fundamental American rights and we are eager to work with your Administration to secure and implement the strongest possible protections from smog pollution.

Respectfully,

Alta, UT - Tom Pollard
Alton, IL - Brant Walker
Ames, IA - Ann Campbell
Ann Arbor, MI - Christopher Taylor
Baltimore, MD - Stephanie C. Rawlings-Blake
Bloomington, IN - Mark Krusan
Borough of West Chester, PA - Carolyn Comitta
Bridgeport, CT - Bill Finch
Burlington, VT - Miro Weinberger
Carmel, IN - James C. Brainard
Charlotte, NC - Dan Clodfelter
Chicago, IL - Rahm Emanuel
Clarkston, GA - Ted Terry
College Park, MD - Andrew Fellows
Decatur, GA - Jim Baskett
Elkhart, IN - Dick L. Moore
Evanston, IL - Elizabeth Tisdahl
Fayetteville, AR - Lioneld Jordan
Ferndale, MI - David Coulter
Fridley, MN - Scott Lund
Garden Grove, CA - Bao Nguyen
Glen Carbon, IL - Robert Jackstadt
Grand Rapids, MI - George Heartwell
Greenfield, MA - William F. Martin
Highland Park, IL - Nancy Rotering
Ketchum, ID - Nina Jonas
Kingston Springs, TN - Francis A. Gross
Las Cruces, NM - Ken Miyagishima
Little Rock, AR - Mark Stodola
Long Beach, CA - Robert Garcia
Los Angeles, CA - Eric Garcetti
Malden, MA - Gary Christenson
Malibu, CA - John Sibert
Medford, MA - Michael McGlynn
Melrose, MA - Robert J. Dolan

Minneapolis, MN - Betsy Hodges
Moab, UT - Dave Sakrison
Mosier, OR - Arlene Burns
Mukilteo, WA - Jennifer Gregerson
Muncie, IN - Dennis Tyler
New York City, NY - Bill de Blasio
Newburyport, MA - Donna D. Holaday
Newton, MA - Setti Warren
Norman, OK - Cindy S. Rosenthal
North Chicago, IL - Leon Rockingham
Northampton, MA - David Narkewicz
Oakland, CA - Libby Schaaf
Ogden, UT - Mike Caldwell
Park Forest, IL - John A. Ostenburg
Philadelphia, PA - Michael Nutter
Pittsburgh, PA - William Peduto
Salt Lake City, UT - Ralph Becker
San Francisco, CA - Ed Lee
Santa Fe, NM - Javier M. Gonzales
Santa Monica, CA - Kevin McKeown
Seattle, WA - Ed Murray
Somerset, MD - Jeffrey Z. Slavin
Somerville, MA - Joseph Curtatone
South Bend, IN - Pete Buttigieg
South Miami, FL - Philip K. Stoddard, PhD
St. Louis, MO - Francis G. Slay
St. Petersburg, FL - Rick Kriseman
Sugar Creek, MO - Matt Mallinson
Syracuse, NY - Stephanie A. Miner
Torrance, CA - Patrick J. Furey
University City, MO - Shelley Welsch
Village of Lombard, IL - Keith Giagnorio
Warren, MI - Jim Fouts
West Hollywood, CA - Lindsey P. Horvath
Winthrop, MA - James McKenna

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lisa Garcia
Sent: Wed 3/2/2016 7:55:08 PM
Subject: RE: Just getting around to your message!!

Hey there:
Definitely let me know of the dates in April for earth week.
I'll try to block the date4s off and then when your ready to share what's up your sleeve
Let Me KNOW how I can help!!

Take care!

-----Original Message-----

From: Ali, Mustafa [mailto:Ali.Mustafa@epa.gov]
Sent: Friday, February 26, 2016 10:19 PM
To: Lisa Garcia
Subject: RE: Just getting around to your message!!

Lisa,

I know you would if you could. There is a lot going on and everyone is doing well so far. If your schedule allows you should come down during "Earth Week" I have a few interesting things happening that week but you know me well, so I'm sure you can imagine what I have up my sleeve. Lol

Have a safe trip to San Fran and hope to see you soon :)

Blessings
Mustafa

-----Original Message-----

From: Lisa Garcia [mailto:lgarcia@earthjustice.org]
Sent: Friday, February 26, 2016 7:55 PM
To: Ali, Mustafa <Ali.Mustafa@epa.gov>
Subject: Re: Just getting around to your message!!

I'm in San Fran for a Board meeting. Sorry You know I would help you any way I can!!!

I really need to plan a day to come visit all of you. I think in April I can come visit EPA.
Hope you are well .
Talk soon,
Lisa

Sent from my iPhone

> On Feb 26, 2016, at 7:49 PM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:
>
> March 10th at the Metro City Marriott in Washington DC.
>
> Sent from my iPhone
>
>> On Feb 26, 2016, at 7:15 PM, Lisa Garcia <lgarcia@earthjustice.org> wrote:
>>
>> Sorry. What is the date and where?
>>
>> Sent from my iPhone

>

To: Lee, Charles[Lee.Charles@epa.gov]
Cc: Tejada, Matthew[Tejada.Matthew@epa.gov]; Stephanie Maddin[smaddin@earthjustice.org]; Adrian Martinez[amartinez@earthjustice.org]; Robinson, Victoria[Robinson.Victoria@epa.gov]; Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Emma Cheuse
Sent: Mon 6/8/2015 1:54:50 PM
Subject: RE: EJ 2020

Good morning -- and many thanks for this update and this additional comment time. It will be much appreciated by a number of groups interested in commenting.

Very best,

Emma

Emma Cheuse

Staff Attorney

Earthjustice

1625 Massachusetts Avenue, N.W., Suite 702

Washington, DC 20036-2243

T: 202.745.5220 or 202.667.4500 Ext. 5220

F: 202.667.2356

earthjustice.org



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delete the message and any attachments.

From: Lee, Charles [mailto:Lee.Charles@epa.gov]
Sent: Monday, June 08, 2015 9:54 AM
To: Emma Cheuse
Cc: Tejada, Matthew; Stephanie Maddin; Adrian Martinez; Robinson, Victoria; Ali, Mustafa
Subject: RE: EJ 2020

Good morning Emma

I was going to call you today on this. We decided on July 14. The Listserv announcement will go out today.

Charles

From: Emma Cheuse [mailto:echeuse@earthjustice.org]
Sent: Monday, June 08, 2015 9:47 AM
To: Lee, Charles
Cc: Tejada, Matthew; Stephanie Maddin; Adrian Martinez
Subject: RE: EJ 2020

Dear Charles,

Just checking in re: request for extension of the deadline on Plan EJ2020.

Very best,

Emma

Emma Cheuse

Staff Attorney

Earthjustice

1625 Massachusetts Avenue, N.W., Suite 702

Washington, DC 20036-2243

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From: Lee, Charles [<mailto:Lee.Charles@epa.gov>]

Sent: Thursday, May 21, 2015 10:08 AM

To: Stephanie Maddin; Emma Cheuse

Cc: Browne, Jacqueline

Subject: Re: EJ 2020 Session on May 26

Stephanie

I left you a voice mail on this. It was my understanding that we would not be doing a webinar, as I will not be in the office and will have access only through a teleconference. It would be easier to walk people through the framework document.

If you think we have a need for a power point, we have one but that may make things more confusing if there are two documents.

Thanks

Charles

From: Stephanie Maddin <smaddin@earthjustice.org>
Sent: Thursday, May 21, 2015 9:50 AM
To: Lee, Charles; Emma Cheuse
Cc: Browne, Jacqueline
Subject: RE: EJ 2020 Session on May 26

If you have the power point you used for the other webinars, can I get it so I can load it for the webinar portion of the call?

From: Lee, Charles [<mailto:Lee.Charles@epa.gov>]
Sent: Tuesday, May 19, 2015 6:25 PM
To: Stephanie Maddin; Emma Cheuse
Cc: Browne, Jacqueline
Subject: EJ 2020 Session on May 26

Stephanie and Emma

I am checking in to see if there is anything you need from me for next Tuesday's call. I am currently in California for the NEJAC meeting this week and want to make sure all is set for this important call.

Thanks

Charles

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Leslie Fields
Sent: Mon 3/23/2015 9:30:55 PM
Subject: good to see you today; is there a list of state OEJ offices?

Hi Mustafa

I left you a vm. Is there a good list of state OEJ offices with contacts that you use? thanks, Leslie

--

Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

To: Emma Cheuse[echeuse@earthjustice.org]
Cc: Tejada, Matthew[Tejada.Matthew@epa.gov]; Stephanie Maddin[smaddin@earthjustice.org]; Adrian Martinez[amartinez@earthjustice.org]; Robinson, Victoria[Robinson.Victoria@epa.gov]; Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lee, Charles
Sent: Mon 6/8/2015 1:53:39 PM
Subject: RE: EJ 2020

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Emma

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Staff Attorney

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Thanks

Charles

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Subject: EJ 2020 Session on May 26

Stephanie and Emma

I am checking in to see if there is anything you need from me for next Tuesday's call. I am currently in California for the NEJAC meeting this week and want to make sure all is set for this important call.

Thanks

Charles

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Stephanie Maddin
Sent: Tue 4/21/2015 3:38:49 PM
Subject: Outreach to Faith Community on Ozone

Good Morning Ali!

As I understand, you've done significant engagement of the faith community around environmental matters and I wanted to know if there's been any current outreach to the faith community from EPA on the proposed ozone rule? We are continuing to lift up the voices of impacted citizens and would love to know who is engaged that we don't know about. Do you have any time to chat this week or perhaps a few reference points?

Thanks in advance!

Stephanie Maddin

Legislative Counsel

Earthjustice D.C. Office

1625 Massachusetts Avenue NW

Suite 702

Washington DC, 20036

T: 202-745-5210

F: 202-667-2356

earthjustice.org

facebook.com/earthjustice

twitter.com/earthjustice



Because the earth needs a good lawyer

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Karissa Gerhke
Sent: Mon 7/20/2015 12:59:28 PM
Subject: Re: Nice to meet you.

Great! Look forward to it.

Best,
KG

On Mon, Jul 20, 2015 at 8:37 AM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:

Karissa,

It was great to meet you as well. Look for a email in about 3 weeks, looking for nominations for the workgroup.

Blessings
Mustafa

Sent from my iPhone

> On Jul 20, 2015, at 8:00 AM, Karissa Gerhke <karissa.gerhke@sierraclub.org> wrote:

>

> Hi Mustafa-- Karissa here with the SSC. I wanted to say that it was nice to meet you at the Generation Progress panel last Thursday. It's always great to meet an organizer, not to mention one employed at the EPA who is embedded in the struggles for environmental and social justice.

>

> Please keep me posted if there are opportunities for young people to engage with the EPA moving forward. (Especially with that youth working group you mentioned.)

>

> All the best,

> Karissa

>

>

>

> --

> Karissa Gerhke

> National Director, Sierra Student Coalition

> 202.548.4584

>

--

Karissa Gerhke

National Director, Sierra Student Coalition
202.548.4584

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Karissa Gerhke
Sent: Mon 7/20/2015 12:00:14 PM
Subject: Nice to meet you.

Hi Mustafa-- Karissa here with the SSC. I wanted to say that it was nice to meet you at the Generation Progress panel last Thursday. It's always great to meet an organizer, not to mention one employed at the EPA who is embedded in the struggles for environmental and social justice. Please keep me posted if there are opportunities for young people to engage with the EPA moving forward. (Especially with that youth working group you mentioned.)

All the best,
Karissa

--

Karissa Gerhke
National Director, Sierra Student Coalition
202.548.4584

To: 'Jose Gonzalez'[jgonzalez@latinooutdoors.org]; Beth Lynk[BLink@rabengroup.com]
Cc: GreenGDIExt[GreenGDIExt@rabengroup.com]; Camille Cummings[CCummings@rabengroup.com]; Stephanie Maddin[smaddin@earthjustice.org]; Corey Walker[CWalker@rabengroup.com]; Danielle Deane[DDeane@rabengroup.com]; Alaina Beverly[Ex. 6 - Personal Privacy]; Shawntera Hardy[hardy@fresh-energy.org]; Lisa Garcia[lgarcia@earthjustice.org]; Brenda Arredondo[BArredondo@rabengroup.com]; Erin Dominguez[EDominguez@rabengroup.com]
From: Keith Rushing
Sent: Wed 9/3/2014 6:08:30 PM
Subject: RE: Green 2.0 Working Group Meeting

I tried as well and was just listening to music.

Keith

From: Jose Gonzalez [mailto:jgonzalez@latinooutdoors.org]
Sent: Wednesday, September 03, 2014 2:07 PM
To: Beth Lynk
Cc: GreenGDIExt; Camille Cummings; Stephanie Maddin; Corey Walker; Danielle Deane; Alaina Beverly; Shawntera Hardy; Lisa Garcia; Brenda Arredondo; Erin Dominguez
Subject: Re: Green 2.0 Working Group Meeting

Hello everyone,

I called in but it said the host had not just joined the meeting--just waiting with music. Did I enter the right call?

José G. González | Founder-Director **Latino Outdoors** |

@JoseBilingue @Green_Chicano @LatinoOutdoors

On Tue, Sep 2, 2014 at 2:56 PM, Beth Lynk <BLink@rabengroup.com> wrote:

Conference Line

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Joining us in person?

We look forward to hosting you at our office. We are located on the 6th floor of the Human Rights Campaign Building.

When you arrive, please notify the security officer that you are here. He will direct you to call our front desk. Once we are notified of your arrival, we will greet you downstairs and bring you up to the 6th floor.

Thank you

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Sharonda Williams-Tack
Sent: Tue 3/1/2016 9:13:22 PM
Subject: Follow-up to Sierra Club meeting

Hi Mustafa:

It was a pleasure chatting with you last week. I wanted to follow-up on my request regarding the legal basis of advocating for spatial restrictions in a cap-and-trade program. Also a colleague asked me about EPA's actions regarding Flint. Would you mind sharing with me what you said about EPA's current action and next steps in regard to Flint. That part of the conversation isn't well reflected in my notes. Thank you.

Sincerely,
Sharonda C. Williams-Tack, Esq.
Environmental Justice State Coordinator
Email: sharonda.williams-tack@sierraclub.org
Phone: (202) 675-7902

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lisa Garcia
Sent: Fri 2/27/2015 8:46:26 PM
Subject: RE: Mustafa

Hope the conference goes well! Yes, I am still very interested in healthy communities work. And getting me out to more communities and to more conferences...

So keep me in mind and posted on all of this!

When is NEJAC? San Diego- did you settle on dates yet?

Hope to see you all there!

From: Ali, Mustafa [mailto:Ali.Mustafa@epa.gov]
Sent: Friday, February 27, 2015 9:49 AM
To: Lisa Garcia
Subject: Re: Mustafa

Thanks :) hope all is well I'm in Atlanta at the CUPP conference. I will send you some info if you are still focusing on "healthy communities".

Sent from my iPhone

On Feb 27, 2015, at 9:39 AM, Lisa Garcia <lgarcia@earthjustice.org> wrote:

Sorry here is the email- I had to go into my email box...

ljackson@apple.com

and her press person

Press Contacts:

Christine Monaghan

Apple

cmonaghan@apple.com

(408) 974-8850

I would send to both emails-

From: Lisa Garcia
Sent: Thursday, February 26, 2015 7:40 PM
To: Ali, Mustafa
Subject: Re: Mustafa

Hey there!
So sorry I didn't reply right away.
LPJ is at her apple email- I think it's ljackson@apple.com

And I haven't heard of Marcia but will keep an ear to the ground - I know folks come to me when it's almost final but I'll ask.

Sent from my iPhone

> On Feb 18, 2015, at 2:03 PM, "Ali, Mustafa" <Ali.Mustafa@epa.gov> wrote:
>
>
> Lisa,
>
> I hope all is going well on your end, it is crazy as usual over here with trying to get the Agency to do the right thing ☐.
>
> Two quick items:
> 1) You asked me to let you know of talented folks who cross my path and a young lady by the name of "Marcia O. Wright" will be interviewing with Earth Justice this week. You may want to keep her on your radar.
>
> 2) I want to invite Administrator Jackson to an event in April and I lost her number when my phone got jacked up, do you have contact info for her?
>
> Blessings
> Mustafa
>
> Sent from my iPhone

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lisa Garcia
Sent: Wed 10/21/2015 9:26:19 PM
Subject: RE: National Youth Work Group on Climate Justice

Awesome – I would love to catch up soon. I am out for a few days starting tomorrow but lets connect soon!

From: Ali, Mustafa [mailto:Ali.Mustafa@epa.gov]
Sent: Wednesday, October 21, 2015 3:58 PM
To: Lisa Garcia
Subject: Re: National Youth Work Group on Climate Justice

We have some exciting things happening with the IWG as well. Let's catch up and I will tell you all about them....

Sent from my iPhone

On Oct 21, 2015, at 3:46 PM, Lisa Garcia <lgarcia@earthjustice.org> wrote:

This sounds awesome! Wish I could join ;-)

Congrats on finally get this over the finish line. I know you are so committed to all of this.

Hope all is well!

From: Ali, Mustafa [mailto:Ali.Mustafa@epa.gov]
Sent: Tuesday, October 20, 2015 9:12 PM
To: Ali, Mustafa
Subject: National Youth Work Group on Climate Justice

Environmental Justice & Climate Justice Family,

I wanted to share the information below with you on the **“National Climate Justice Youth Work Group”** we are launching today. I know many of you have been huge supporters of youth and providing opportunities for them to be more engaged on a substantive level on environmental and social justice issues. This National Climate Justice Youth Work Group, is a “first of its kind” opportunity and will hopefully further highlight for many, the incredible innovation, energy and ingenuity that youth bring to the work of addressing climate change. **I hope you will share this opportunity broadly with your networks and youth who may be interested:**

EPA Seeking Young Adults to Serve on NEJAC Youth Work Group on Climate Justice

EPA is seeking young adults, ages 18 to 29, who are involved in climate change efforts and/or advocacy, to participate on this “first of its kind” youth-led advisory work group to assist the [National Environmental Justice Council](#) (NEJAC) in developing advice and recommendations to assist EPA in developing best practices to address climate change concerns. EPA recognizes the key role that youth play in bringing awareness to climate change and offering solutions to transform our societies toward a low-carbon and climate resilient future. It is essential that youth have a seat at the table and help inform the hard decisions that must be made that affect so many. Thus, the formation of the NEJAC Youth Perspectives on Climate Justice Work Group seeks to include young people in assisting EPA in addressing climate change concerns.

The work group will explore several issues, including:

- How can EPA effectively engage with youth on climate change and adaptation planning using new resources and tools designed to help communities become more resilient and better protect themselves from the impacts of climate change? What activities and mechanisms (e.g. policy, guidance, or protocol) should EPA consider to authentically engage and work collaboratively with youth, and other interested stakeholders, to identify and address climate change impacts on overburdened and vulnerable communities?
- What best practices, including efforts to address the compounding health vulnerabilities brought on by climate change, can be provided using youth driven projects from across the United States from which results-oriented recommendations can be drawn?

Applications are due **November 30, 2015**

The NEJAC Youth Perspectives on Climate Justice Work Group will be convened in January 2016. We anticipate that the work group will conduct its business primarily through bimonthly teleconference calls. This work group may meet face-to-face once annually. The average workload for the members is approximately 4 to 5 hours per month, which represents a rough estimate of the time members will spend in teleconference calls and reviewing relevant documents.

We are looking forward to working with a geographically diverse group of emerging thought leaders in the climate change space. **Check out the video here: [Your Voice Matters!](#)** Apply now for the new “Climate Justice Youth Work Group.”

Check out today's [EJ in Action Blog](#) to read more about why your voice matters.

Learn more about the [Charge](#).

Click [here](#) for the **Membership Application**.

Got **questions?** Check out the [FAQs](#).

<https://www.youtube.com/watch?v=Ik0av4rmN4I>

Please share with everyone about this opportunity for our Next Generation of Climate Justice Leaders:

- **Social Media:**

- **Twitter:**

- @EJinAction We're forming a Climate Justice Youth Workgroup to develop innovative strategies to [#ActOnClimate](#). Apply today! <http://go.usa.gov/3SdEQ>

Blessings,

Mustafa Santiago Ali

Senior Advisor to the Administrator

for Environmental Justice & Community Revitalization

Environmental Protection Agency

WJC 2226D

Phone: 202-564-2606

Email: ali.mustafa@epa.gov

To: Leslie Fields[leslie.fields@sierraclub.org]
Cc: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Terry McGuire
Sent: Thur 10/2/2014 5:15:43 PM
Subject: Re: could you possibly meet with folks from MI & TX coming to testify on SSM around 3pm on Oct 6?

Hi Mustafa,

Is there a good number to reach you? I know it's short notice, but we'll have a group of folks in from across the country next Tuesday the 7th for the SSM hearing and it would be great if we could snag a quick meeting with you in the afternoon. We should be wrapped up with testifying by 1pm.

Thanks very much,

Terry

On Wed, Sep 24, 2014 at 12:59 PM, Leslie Fields <leslie.fields@sierraclub.org> wrote:

Thanks. Turns out the meeting will probably have to be Oct 7. My colleague Terry McGuire is copied because he's graciously handling the logistics. Thanks, Leslie

On Wed, Sep 24, 2014 at 11:59 AM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:

Leslie,

I will definitely try. I'm on the road working on some diesel issues at the moment and will be back in DC late tonight. I know I have to be in Cali that week, so I need to see if I can move some things around and if not who we can get to talk with folks.

Blessings

Mustafa Ali

Senior Advisor to the Administrator for Environmental Justice [Acting]

Sent from my iPhone

On Sep 23, 2014, at 6:07 PM, "Leslie Fields" <leslie.fields@sierraclub.org> wrote:

Hi Mustafa

I hope you're well. I'm recovering from the NYC Climate rally. We've got folks coming to testify on the SSM rule on Oct 6. Would it be possible for you to meet with them to tell what else the EPA is doing on it re: EJ:? thanks, Leslie

--

Leslie G. Fields

Director, Environmental Justice & Community Partnerships Program

Sierra Club

50 F Street NW, Eighth Floor
Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

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Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
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Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

--

Terry McGuire
Washington Representative
Sierra Club
202-495-3045

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Leslie Fields
Sent: Thur 9/18/2014 6:15:15 PM
Subject: Looking for final EJ analysis for the DSW rule.

Thanks! Do you know where I can find the final EJ analysis for the DSW Rule? The draft analysis is on the website but not seeing the final. I even asked Deeohn but she said she doesn't have a copy. thanks, Leslie
Thanks again for coming to our briefing!

On Thu, Sep 18, 2014 at 2:12 PM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:

EJ Family,

I wanted to make sure that all of you know about this recent announcement. This is an interesting opportunity for some of our communities. Please share with others who may find value in this opportunity.

HUD Launches \$1 Billion National Disaster Resilience Competition Announces Partnership with Rockefeller Foundation

WASHINGTON - U.S. Department of Housing and Urban Development Secretary Julian Castro today launched a \$1 billion National Disaster Resilience Competition. He was joined by Dr. Judith Rodin, President of the Rockefeller Foundation, in announcing that eligible states and localities can now begin applying for funds. Representatives from eligible communities will have the opportunity to attend Rockefeller-supported Resilience Academies across the country to strengthen their funding proposals.

"The National Disaster Resilience Competition is going to help communities that have been devastated by natural disasters build back stronger and better prepared for the future," said Secretary Julian Castro. "This competition will help spur innovation, creatively distribute limited federal resources, and help communities across the country cope with the reality of severe weather that is being made worse by climate change."

"The Rockefeller Foundation is committed to spurring innovation in resilience planning and design so that communities can build better, more resilient futures, particularly for their most vulnerable citizens" said Dr. Judith Rodin, President of the Rockefeller Foundation. "Building resilience will minimize the impact of the next shock, while also improving life in communities day-to-day, allowing them to yield a resilience dividend. Everyone wins."

National Disaster Resilience Competition

As the recent [National Climate Assessment](#) made clear, extreme weather events-including heat waves, drought, tropical storms, high winds, storm surges and heavy downpours-are becoming more severe. In many places these risks are projected to increase substantially due to rising sea levels and evolving development patterns, causing risks to the safety, health, and economies of entire communities. Events like Hurricane Sandy have made it clear we remain vulnerable to such events in spite of advances in disaster preparedness. American communities cannot effectively reduce their risks and vulnerabilities without planning for future extreme events and other impacts of climate change after a disaster and in their everyday decision-making.

The [National Disaster Resilience Competition](#) makes \$1 billion available to communities that have been struck by natural disasters in recent years. The competition promotes risk assessment and planning and will fund the implementation of innovative resilience projects to better prepare communities for future storms and other extreme events. Funding for the competition is from the Community Development Block Grant disaster recovery (CDBG-DR) appropriation provided by the Disaster Relief Appropriations Act, 2013 (PL 113-2).

This competition responds to requests from state, local, and tribal leaders who have asked the federal government to help them prepare their communities for the impacts of climate change and support investments in more resilient infrastructure.

All successful applicants will need to tie their proposals to the eligible disaster from which they are recovering. For example, a community that suffered a flood might want to offer flood buyouts and property acquisition in the most impacted and distressed areas, followed by restoration of a wetland to limit future flooding and provide a nature preserve or recreation area. A community that lost housing and a road during a mudslide might want to not only construct housing in a safer area for survivors, but also find a financing mechanism for affected downstream businesses to survive the effects of the last event and be prepared for and recover more quickly from future hazards.

Partnership with Rockefeller Foundation

Given the complexity of the challenge, the U.S. Department of Housing and Urban Development (HUD) will partner with the Rockefeller Foundation to help communities better understand the innovation, broad commitment, and multi-faceted approach that is required to build toward a more resilient future. As they did in HUD's [Rebuild by Design](#) competition, the Rockefeller Foundation will provide targeted technical assistance to eligible communities and support a stakeholder-driven process, informed by the best available data, to identify recovery needs and innovative solutions. The six winning projects selected through the [Rebuild by Design](#) competition in June 2014 serve as models of how philanthropic resources and the federal government can be leveraged to support communities recovering from disasters while also strengthening their ability to withstand future disasters.

Eligible Applicants

There are 67 eligible applicants for the \$1 billion National Disaster Resilience Competition. All states with counties that experienced a Presidentially Declared Major Disaster in 2011, 2012 or 2013 are eligible to submit applications that address unmet needs as well as vulnerabilities to future extreme events, stresses, threats, hazards, or other shocks in areas that were most impacted and distressed as a result of the effects of the Qualified Disaster. This includes 48 of 50 states plus Puerto Rico and Washington, DC. [1] In addition, 17 local governments that have received funding under PL 113-2 are also eligible. You can find a list of [eligible applicants here](#).

Objectives

The Competition seeks to meet the following six objectives:

1. Fairly and effectively allocate \$1 billion in remaining CDBG-DR funds.[2]
2. Create multiple examples of modern disaster recovery that apply science-based and forward-looking risk analysis to address recovery, resilience, and revitalization needs.
3. Leave a legacy of institutionalizing-in as many states and local jurisdictions as possible-the implementation of thoughtful, sound, and resilient approaches to addressing future risks.
4. Provide resources to help communities plan and implement disaster recovery that makes them more resilient to future extreme weather events or other shocks, while also improving quality of life for existing residents.
5. Fully engage community stakeholders to inform them about the impacts of climate change and develop pathways to resilience based on sound science.

6. Leverage investments from the philanthropic community to help communities define problems, set policy goals, explore options, and craft solutions to inform their own local and regional resilient recovery strategies.

[1] Nevada and South Carolina did not have major disaster declarations between 2011-2013.

[2] Public Law 113-2 appropriated \$16.0B (\$15.2B post-sequester) to HUD in CDBG-DR funds for disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization. By law, these funds are limited to addressing Presidentially Declared Disasters from 2011-2013. HUD has until 9/30/17 to obligate all funds.

Overview of Phases

The National Disaster Resilience Competition is a year-long competition structured in two phases: (1) the framing phase and (2) the implementation phase. The competition is structured to guide applicants in the framing phase through broad consideration of their disaster recovery needs, vulnerabilities, stakeholder interests, resilience and other community development investment alternatives. Then they can refine those needs and design potential solutions in the implementation phase.

- Phase 1 applications will be due in March 2015. Successful applicants in Phase 1 will be invited to participate in Phase 2 to design solutions for recovery and resilience.

- Phase 2 applications must also include an analysis for any proposed projects with an account of the social and ecological benefits and costs as a consideration. The best proposals from Phase 2 will receive funds for implementation and will demonstrate how communities across the country can build a more resilient future. HUD expects to make final award announcements in late 2015.

Blessings,

Mustafa Santiago Ali

Senior Advisor to the Administrator

for Environmental Justice [Acting]

Environmental Protection Agency

WJC 2226D

Phone: 202-564-2606

Email: ali.mustafa@epa.gov

--

Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lisa Garcia
Sent: Fri 2/27/2015 2:39:47 PM
Subject: RE: Mustafa

Sorry here is the email- I had to go into my email box...

ljackson@apple.com

and her press person

Press Contacts:

Christine Monaghan

Apple

cmonaghan@apple.com

(408) 974-8850

I would send to both emails-

From: Lisa Garcia
Sent: Thursday, February 26, 2015 7:40 PM
To: Ali, Mustafa
Subject: Re: Mustafa

Hey there!
So sorry I didn't reply right away.
LPJ is at her apple email- I think it's ljackson@apple.com

And I haven't heard of Marcia but will keep an ear to the ground - I know folks come to me when it's almost final but I'll ask.

Sent from my iPhone

> On Feb 18, 2015, at 2:03 PM, "Ali, Mustafa" <Ali.Mustafa@epa.gov> wrote:
>
>

> Lisa,
>
> I hope all is going well on your end, it is crazy as usual over here with trying to get the Agency to do the right thing ☐.
>
> Two quick items:
> 1) You asked me to let you know of talented folks who cross my path and a young lady by the name of "Marcia O. Wright" will be interviewing with Earth Justice this week. You may want to keep her on your radar.
>
> 2) I want to invite Administrator Jackson to an event in April and I lost her number when my phone got jacked up, do you have contact info for her?
>
> Blessings
> Mustafa
>
> Sent from my iPhone

To: Tejada, Matthew[Tejada.Matthew@epa.gov]; Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lisa Garcia
Sent: Wed 10/21/2015 8:58:11 PM
Subject: FW: Follow-up from our last conversation
Joseph Reed Resume.docx

I am forwarding this resume from Joseph.

He is really interested in doing more ej work. I told him EPA may be hiring and that he should reach out to you- also to Mustafa for ideas on legislative work.

Earthjustice is not hiring right now- but he seems pretty committed and was recommended by Danielle so I thought we could keep him encouraged!!

He may give you a call...

Thanks so much!

From: Joseph Reed Ex. 6 - Personal Privacy
Sent: Tuesday, September 29, 2015 11:04 AM
To: Lisa Garcia
Subject: Follow-up from our last conversation

Hi Lisa

I hope you are well! I am sure with everything happening in the House and Senate regarding clean energy, you are incredibly busy right now.

It has been a few weeks since we last spoke. I just wanted to know if you received my resume in my last email to you. Here is another email in case you didn't receive it. Also I wanted to know if you knew of any other leads that I can look into.

Thanks,

Joe

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lisa Garcia
Sent: Fri 2/27/2015 12:40:15 AM
Subject: Re: Mustafa

Hey there!
So sorry I didn't reply right away.
LPJ is at her apple email- I think it's ljackson@apple.com

And I haven't heard of Marcia but will keep an ear to the ground - I know folks come to me when it's almost final but I'll ask.

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>
> Blessings
> Mustafa
>
> Sent from my iPhone

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lisa Garcia
Sent: Wed 10/21/2015 7:46:03 PM
Subject: RE: National Youth Work Group on Climate Justice

This sounds awesome! Wish I could join ;-)

Congrats on finally get this over the finish line. I know you are so committed to all of this.

Hope all is well!

From: Ali, Mustafa [mailto:Ali.Mustafa@epa.gov]
Sent: Tuesday, October 20, 2015 9:12 PM
To: Ali, Mustafa
Subject: National Youth Work Group on Climate Justice

Environmental Justice & Climate Justice Family,

I wanted to share the information below with you on **the “National Climate Justice Youth Work Group”** we are launching today. I know many of you have been huge supporters of youth and providing opportunities for them to be more engaged on a substantive level on environmental and social justice issues. This National Climate Justice Youth Work Group, is a “first of its kind” opportunity and will hopefully further highlight for many, the incredible innovation, energy and ingenuity that youth bring to the work of addressing climate change. **I hope you will share this opportunity broadly with your networks and youth who may be interested:**

EPA Seeking Young Adults to Serve on NEJAC Youth Work Group on Climate Justice

EPA is seeking young adults, ages 18 to 29, who are involved in climate change efforts and/or advocacy, to participate on this "first of its kind" youth-led advisory work group to assist the National Environmental Justice Council (NEJAC) in developing advice and recommendations to assist EPA in developing best practices to address climate change concerns. EPA recognizes the key role that youth play in bringing awareness to climate change and offering solutions to transform our societies toward a low-carbon and climate resilient future. It is essential that youth have a seat at the table and help inform the hard decisions that must be made that affect so many. Thus, the formation of the NEJAC Youth Perspectives on Climate Justice Work Group seeks to include young people in assisting EPA in addressing climate change concerns.

The work group will explore several issues, including:

- How can EPA effectively engage with youth on climate change and adaptation planning using new resources and tools designed to help communities become more resilient and better protect themselves from the impacts of climate change? What activities and mechanisms (e.g. policy, guidance, or protocol) should EPA consider to authentically engage and work collaboratively with youth, and other interested stakeholders, to identify and address climate change impacts on overburdened and vulnerable communities?
- What best practices, including efforts to address the compounding health vulnerabilities brought on by climate change, can be provided using youth driven projects from across the United States from which results-oriented recommendations can be drawn?

Applications are due **November 30, 2015**

The NEJAC Youth Perspectives on Climate Justice Work Group will be convened in January 2016. We anticipate that the work group will conduct its business primarily through bimonthly teleconference calls. This work group may meet face-to-face once annually. The average workload for the members is approximately 4 to 5 hours per month, which represents a rough estimate of the time members will spend in teleconference calls and reviewing relevant documents.

We are looking forward to working with a geographically diverse group of emerging thought leaders in the climate change space. **Check out the video here: [Your Voice Matters!](#)** Apply now for the new "Climate Justice Youth Work Group."

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<https://www.youtube.com/watch?v=Ik0av4rmN4I>

Please share with everyone about this opportunity for our Next Generation of Climate Justice Leaders:

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- **Twitter:**

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Blessings,

Mustafa Santiago Ali

Senior Advisor to the Administrator

for Environmental Justice &Community Revitalization

Environmental Protection Agency

WJC 2226D

Phone: 202-564-2606

Email: ali.mustafa@epa.gov

To: Larry Williams Jr[larry.williams.jr@sierraclub.org]
Cc: Dean Hubbard[dean.hubbard@sierraclub.org]; Minter, Marsha[Minter.Marsha@epa.gov]; Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Leslie Fields
Sent: Mon 3/28/2016 12:51:52 AM
Subject: Re: Confirming our Monday Meeting

Hey Larry
Mustafa and I have concluded we dont need to meet for now. Thanks!

On Mar 25, 2016 11:20 AM, "Larry Williams Jr" <larry.williams.jr@sierraclub.org> wrote:

Hey Folks,
Just writing to confirm our Monday 3/28 meeting at EPA 10am?

LLWJ

--

Larry Williams Jr.

Labor & Coal Coordinator, Sierra Club Labor Program

602-635-8504

<http://www.sierraclub.org/labor-program>

The Sierra Club is fighting for a worker-friendly clean energy economy. Help us make it happen [here](#).

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Marianne Engelman Lado
Sent: Tue 9/20/2016 2:21:26 AM
Subject: Re: 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities

Good to know. Thanks.

On Sep 19, 2016, at 9:22 PM, Ali, Mustafa <Ali.Mustafa@epa.gov<mailto:Ali.Mustafa@epa.gov>> wrote:

Let's focus for now on those you shared the info with. We also have some streaming for those who can't attend in person.

Sent from my iPhone

On Sep 19, 2016, at 9:20 PM, Marianne Engelman Lado
<mengelmanlado@earthjustice.org<mailto:mengelmanlado@earthjustice.org>> wrote:

Thanks.

I sent the info to a handful of people – should I circulate the scholarship info more broadly?

Thanks again,

Marianne

From: Marianne Engelman Lado
Sent: Monday, September 19, 2016 9:03 PM
To: Mustafa Ali
Subject: Re: 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities

Where should people write or whom should they contact if they would need a scholarship?

I wonder who might sponsor community participants. It might be something to plan for next year — perhaps a foundation that funds racial justice work? I'll give it more thought.

On Sep 19, 2016, at 8:25 PM, Ali, Mustafa <Ali.Mustafa@epa.gov<mailto:Ali.Mustafa@epa.gov>> wrote:

Marianne,

There is limited scholarship opportunities for community members. I'm working diligently to expand those opportunities - if you know of others who might want to sponsor communities they are working with definitely let me know. I look forward to seeing you to on the 5th.

Blessings
Mustafa

Sent from my iPhone

On Sep 19, 2016, at 7:07 PM, Marianne Engelman Lado
<mengelmanlado@earthjustice.org<mailto:mengelmanlado@earthjustice.org>> wrote:
Thanks.

It looks like registration is free but is there any funding available for travel and lodging for participants who might not otherwise be able to afford to go? I just wanted to check before circulating the announcement, which I'm sure would be of interest to folks.

I look forward to seeing you at the October 5th meeting regarding the impacts of CAFOs on communities in eastern NC.

Best,

Marianne

From: Ali, Mustafa [mailto:Ali.Mustafa@epa.gov]
Sent: Sunday, September 18, 2016 10:44 PM
To: Marianne Engelman Lado
Subject: 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities

Marianne,

I wanted to personally make sure you knew about the 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities on October 25th<x-apple-data-detectors://0> & 26th. This inaugural Summit is the first of its kind and specifically focused on identifying resources, technical assistance and economic opportunities for our communities...If you have any questions give me a buzz or email...

Please share the link with stakeholders who would benefit from participating in the Summit:
<http://www.survivingtothrivingsummit.org><<http://www.survivingtothrivingsummit.org/>>

Blessings
Mustafa

Sent from my iPhone

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Leslie Fields
Sent: Fri 1/22/2016 2:30:45 PM
Subject: Re: Invitation: Meeting with Mustafa Ali at EPA @ Fri Jan 22, 2016 4pm - 5pm
(leslie.fields@sierraclub.org)

Hi there

Now that the Federal govt is closing at noon, we will need to reschedule. Have a good safe weekend, thanks, Leslie

On Thu, Jan 21, 2016 at 1:26 PM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:

Hi Leslie,

You have a meeting scheduled with Mustafa for tomorrow afternoon. I just wanted to check in with you to see if you want to reschedule for next week or change the meeting to a teleconference due to the impending weather we are expecting tomorrow.

Thanks

Karen L. Martin
Special Assistant to the Senior Advisor for Environmental Justice
Office of the Administrator
U.S. Environmental Protection Agency
martin.karenl@epa.gov
<mailto:Martin.karenl@epa.gov> Room 2226 G WJCS
[202-564-0203](tel:202-564-0203)

-----Original Appointment-----

From: Leslie Fields [<mailto:leslie.fields@sierraclub.org>]
Sent: Tuesday, January 12, 2016 5:43 PM
To: Leslie Fields; Alejandra Nunez; Dean Hubbard; Ali, Mustafa
Subject: Invitation: Meeting with Mustafa Ali at EPA @ Fri Jan 22, 2016 4pm - 5pm
(leslie.fields@sierraclub.org)
When: Friday, January 22, 2016 4:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, DC 20004, United States

[more details »](#)

Meeting with Mustafa Ali at EPA

Meet with M. Ali to discuss economic justice issues in the Clean Power Plan

When

Fri Jan 22, 2016 4pm – 5pm Eastern Time

Where

U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, DC 20004, United States ([map](#))

Calendar

leslie.fields@sierraclub.org

Who

-
- Alejandra Nunez
- Dean Hubbard
- ali.mustafa@epa.gov

Going? **Yes - Maybe - No** [more options »](#)

Invitation from **Google Calendar**

You are receiving this courtesy email at the account ali.mustafa@epa.gov because you are an attendee of this event.

To stop receiving future updates for this event, decline this event. Alternatively you can sign up for a Google account at <https://www.google.com/calendar/> and control your notification settings for your entire calendar.

Forwarding this invitation could allow any recipient to modify your RSVP response. [Learn More](#)

<< File: invite.ics >>

--

Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

To: Peurifoy, Cynthia[Peurifoy.Cynthia@epa.gov]; Carey, Pat[Carey.Pat@epa.gov]; Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Julia Hathaway
Sent: Fri 8/28/2015 10:31:09 PM
Subject: Thank you for inviting me to participate in the special enhancement program
Notes and agenda for next meeting August 28 to group.docx

Hey Cynthia, Pat, and Mustafa,
Thank you for inviting me to participate in Wednesday's EJ program at the BIG training institute. I left feeling energized and inspired by the opportunity to make a difference in the Everglades Agricultural Area communities.

Do you think there's a possibility that one of the Western Palm Beach County municipalities could become one of EPA's Making a Visible Difference Communities? Are there other ways we might partner to help break through on the environmental health and economic disparities?

Just FYI, I'm working with a number of organizations to support training and other opportunities in the Everglades Agricultural Area. I'm doing it to demonstrate authentic care for the communities who have so few options -- in a place where the biggest employer is making them sick! Hopefully over the longer term this same group of people can help train residents to work in the more healthful, sustainable and enriching (\$ and socially) greenharvesting jobs. Please see the attached very very draft memo I just put together for our newly-formed working group.

Thanks again and best regards -- Julia

--

Julia Hathaway
Organizing Representative
Sierra Club
4362 Northlake Blvd., Suite 215
Palm Beach Gardens, FL 33410
Office: 561-318-6118
Cell: 202-315-8211
Julia.Hathaway@sierraclub.org
www.sierraclub.org

With gratitude to Aldo Leopold: "We shall never achieve harmony with the land, any more than we shall achieve absolute justice or liberty for people. In these higher aspirations the important thing is not to achieve but to strive."

Working Group for opportunities in the Western Palm Beach County communities

Summary: The unemployment rate in the Glades communities in western Palm Beach County has historically been among the highest in Florida and the nation. Collaborative efforts are needed to increase employment and economic development opportunities. IBEW 728 is working with the Florida East Coast Electrical Joint Apprenticeship and Training Committee to train area individuals become journeyman wiremen. The five-year program involves classroom and on-the-job training that may be counted as college credit. There is no tuition nor any class fees other than the cost of books (\$400 - \$600 per year), a laptop, and a recommended list of hand tools. Applicants must be 18 years of age and have earned a high school diploma. The only other requirement is to have completed an algebra course. Once licensed, an electrical journeyman's average wage is \$26-32 an hour. Those workers can advance into supervisory positions, which can further increase their pay. Plus, their training and OJT prepares them to become contractors on their own. Other unions have such programs as well.

Issue: While the initial response to the apprenticeship program has been positive in the Glades communities, follow-through has been lacking. This could be due to deeper issues related to efficacy or simply logistical obstacles such as transportation. In any event, participating in a program like this is a potentially life-changing event. We want to see the Everglades Agricultural Area residents benefit, and we are meeting to discuss how to help make that happen.

Participants: Please correct info if I have it wrong

Jimmy Kelleher, Assistant Business Manager, International Brotherhood of Electrical Workers Palm Beach County, Ex. 6 - Personal Privacy jkellerher@ibew728.org

Noemi Morales McGregor, President, Hispanic Democratic Caucus Palm Beach County, Ex. 6 - Personal Privacy
Ex. 6 - Personal Privacy

Lynn Hubbard, President, FL Democratic Black Caucus, PBC "Call to Action" Chapter, Ex. 6 - Personal Privacy
Ex. 6 - Personal Privacy

Judge Edward Rodgers (ret.) Lynne – shall I include Judge Rogers? If so, can you please provide contact information?

Roger Hudspeth, Business Representative, Sheet Metal Workers International Association, Ex. 6 - Personal Privacy roger@smart32wpb.com

Alpesh Patel, Brand & Alignment Strategist, Business Development Expert, Information Architect, and For-Purpose Entrepreneur/Activist, eSANGHE, [561.291.8471](tel:561.291.8471)
Alpesh@eSANGHE.com

Sean Mitchell, Business Manager, Ironworkers Local Union 402, Ex. 6 - Personal Privacy
Ex. 6 - Personal Privacy

Jim Ewing, Sierra Club volunteer, Ex. 6 - Personal Privacy

Julia Hathaway, Organizing Representative, Sierra Club, 202-315-8211,
julia.hathaway@sierraclub.org

Agenda for September 14, 15, 16, 17, or 18 (what dates work for you? 5:30 OK?)
Union Hall at 1003 Belvedere Rd., West Palm Beach

I. Introductions

II. Information-sharing

i. Apprentice programs (Jimmy)

ii. Job creation via legislature – (Roger Hudspeth and Noemi Morales McGregor)

II. Community input – public officials need to hear from residents that they want authentic opportunities for economic development and social wellbeing. How can we achieve that? (Julia)

III. Discuss prospect of holding an “opportunities” event in October – What do we envision? We could do booths/tables, perhaps charge for the space if someone wants to have a booth. Offer free food, have music and maybe things for kids. Or something totally different?

1. Select date – suggest October 3 or 4
2. Identify possible locations – West Tech? Torry Island Pavillion? Other?
3. Identify possible participants (Building trades professions (please correct my references here – want to be respectful), including Electrical Workers, Marine Workers, Ironworkers, Plumbers and Pipefitters, Blockmasons, Laborers, Carpenters, Teamsters, Millwrights, Boilermakers, Bricklayers and Painters. the International Longshoremen’s Association/Young Adults in Action, PBC Homeless Coalition, People Engaged in Active Community Efforts (PEACE) Haitian Caucus?, Democratic groups in Belle Glade and Pahokee?, SEIU, Get Covered America, CareerSource Palm Beach County, Palm Beach County Department of Economic Sustainability, etc.)
4. Recruitment – Do mailings, disseminate via social media, visit churches, neighborhood associations, etc.? Have people on street corners day-before event, offer to have van pick person up at [list of locations]
5. Provide food?
6. Elected officials to invite: School Board Member Marcia Andrews, County Commissioner Melissa McKinlay, State Senator Joe Abruzzo, others?
7. Sketch out likely budget
8. Confirm who is taking what tasks and set deadlines

IV. Schedule next meeting and adjourn

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Marianne Engelman Lado
Sent: Tue 9/20/2016 1:20:47 AM
Subject: RE: 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities

Thanks.

I sent the info to a handful of people – should I circulate the scholarship info more broadly?

Thanks again,

Marianne

From: Marianne Engelman Lado
Sent: Monday, September 19, 2016 9:03 PM
To: Mustafa Ali
Subject: Re: 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities

Where should people write or whom should they contact if they would need a scholarship?

I wonder who might sponsor community participants. It might be something to plan for next year — perhaps a foundation that funds racial justice work? I'll give it more thought.

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Marianne,

There is limited scholarship opportunities for community members. I'm working diligently to expand those opportunities - if you know of others who might want to sponsor communities they

are working with definitely let me know. I look forward to seeing you to on the 5th.

Blessings

Mustafa

Sent from my iPhone

On Sep 19, 2016, at 7:07 PM, Marianne Engelman Lado <mengelmanlado@earthjustice.org> wrote:

Thanks.

It looks like registration is free but is there any funding available for travel and lodging for participants who might not otherwise be able to afford to go? I just wanted to check before circulating the announcement, which I'm sure would be of interest to folks.

I look forward to seeing you at the October 5th meeting regarding the impacts of CAFOs on communities in eastern NC.

Best,

Marianne

From: Ali, Mustafa [<mailto:Ali.Mustafa@epa.gov>]

Sent: Sunday, September 18, 2016 10:44 PM

To: Marianne Engelman Lado

Subject: 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities

Marianne,

I wanted to personally make sure you knew about the 2016 National Training and

Resources Summit for Revitalizing Vulnerable Communities on October 25th & 26th. This inaugural Summit is the first of its kind and specifically focused on identifying resources, technical assistance and economic opportunities for our communities...If you have any questions give me a buzz or email...

Please share the link with stakeholders who would benefit from participating in the Summit: <http://www.survivingtothrivingsummit.org>

Blessings

Mustafa

Sent from my iPhone

To: Kari Fulton[Ex. 6 - Personal Privacy]; Nicole Sitaraman[NSitaraman@opc-dc.gov]; Danielle Deane[ddeane@rabengroup.com]; Brandi Colander[Ex. 6 - Personal Privacy]; Ali, Mustafa[Ali.Mustafa@epa.gov]; Patterson, Jacqueline[jpatterson@naacpnet.org]
From: Leslie Fields
Sent: Wed 9/17/2014 3:06:20 PM
Subject: "Green Room" Reception

Fyi hope to see you there!

YOU ARE CORDIALLY INVITED TO ATTEND

THE 3RD ANNUAL GREEN ROOM

RECOGNIZING AFRICAN AMERICAN LEADERSHIP ON CLIMATE CHANGE







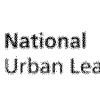
FEATURING
ENVIRONMENTAL
PROTECTION AGENCY
ADMINISTRATOR
GINA MCCARTHY

AND HOSTED BY
HOSEA CHANCEZ
FROM BET'S "THE GAME"
& THE WATCHMEWIN
FOUNDATION

WEDNESDAY, SEPTEMBER 24
ACADIANA RESTAURANT
901 NEW YORK AVENUE NW
WASHINGTON, DC 20001
4:30 PM - 6:30 PM

RSVP AT VESTIGESTRATEGIES.COM/GREENROOM

CO-HOSTED BY:

*THIS RECEPTION QUALIFIES AS A WIDELY HELD EVENT

Stefanie Brown James
CEO & Founding Partner, Vestige Strategies LLC
Founder & Executive Director, Brown Girls Lead Inc.
2101 L Street NW | Suite 800 | Washington, DC 20037
202-903-0763 (office) | 312-385-9612 (cell)

Stefanie@VestigeStrategies.com | [@StefBrownJames](https://www.StefanieBrownJames.com)
www.VestigeStrategies.com | www.StefanieBrownJames.com

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Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lisa Garcia
Sent: Sat 2/27/2016 12:54:35 AM
Subject: Re: Just getting around to your message!!

I'm in San Fran for a Board meeting. Sorry
You know I would help you any way I can!!!

I really need to plan a day to come visit all of you. I think in April I can come visit EPA.
Hope you are well .
Talk soon,
Lisa

Sent from my iPhone

> On Feb 26, 2016, at 7:49 PM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:
>
> March 10th at the Metro City Marriott in Washington DC.
>
> Sent from my iPhone
>
>> On Feb 26, 2016, at 7:15 PM, Lisa Garcia <lgarcia@earthjustice.org> wrote:
>>
>> Sorry. What is the date and where?
>>
>> Sent from my iPhone
>

To: Edwards, Alyssa[edwards.alyssa@epa.gov]; 'Emily Partin'[Ex. 6 - Personal Privacy]; Adam Wells[adam@appvoices.org]; Julie Lawhorn[jlawhorn@arc.gov]; Phil McMullan[phil@appalachianms.com]; burtonwebb@Upike.edu[burtonwebb@Upike.edu]; andrewbuzzelli@UPIKE.edu[andrewbuzzelli@UPIKE.edu]; Miles Ballogg[Miles.Ballogg@cardno.com]; [Ex. 6 - Personal Privacy]; THOUCK@GREENVILLECOUNTY.ORG[THOUCK@GREENVILLECOUNTY.ORG]; Carroll, Ann[carroll.ann@epa.gov]; Patrick Kirby[Patrick.Kirby@mail.wvu.edu]; trowan@eda.gov[trowan@eda.gov]; Logan, Tony - RD, Columbus, OH[tony.logan@oh.usda.gov]; Danielle.M.Arigoni@hud.gov[Danielle.M.Arigoni@hud.gov]; Evelyn Britton[Evelyn.Britton@gsa.gov]; Bill Price[bill.price@sierraclub.org]; MRDuenas@aoa.org[MRDuenas@aoa.org]; Dennis Oden - AKB[dennis.oden@gsa.gov]; Petitjean, Herb (EEC)[Herb.Petitjean@ky.gov]; Burney, Jacob[Burney.Jacob@epa.gov]; Elizabeth Limbrick (limbrick@njit.edu)[limbrick@njit.edu]; WReynolds@AOA.ORG[WReynolds@AOA.ORG]
Cc: Tejada, Matthew[Tejada.Matthew@epa.gov]; Edwards, Alyssa[edwards.alyssa@epa.gov]; Burney, Jacob[Burney.Jacob@epa.gov]; Finley, Jeanine[finley.jeanine@epa.gov]; Minter, Marsha[Minter.Marsha@epa.gov]; Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Ruhl, Suzi
Sent: Thur 9/1/2016 1:35:07 PM
Subject: B2H Session and Community Convening "All Hands" Call
[b2h.session.agenda.dr.final.docx](#)
[convening.agenda.dr.final.docx](#)
[template.convening.dr.final.pdf](#)
[template.b2h.session.pdf](#)
[convening.chart.dr3.docx](#)

**2016 Central Appalachian Regional Brownfields Summit
All Hands Briefing on B2H Events
September 1, 2016 10-11am EST**

Agenda

Call-in: [Ex. 6 - Personal Privacy]

I. Welcome, Purpose and Introductions

II. Review of Events and Roles

- Collaborative Community Convening (September 7, 2016 @ 6:00-7:45)
- Revitalizing Central Appalachia through Brownfields to Healthfields (September 8, 2016 @ 3:00-4:30)

III. Discussion

IV. Next Steps

V. Adjourn

Suzi Ruhl, J.D., M.P.H.
Senior Attorney Advisor
Office of Environmental Justice
US EPA
(202)564-6643

ruhl.suzi@epa.gov

-----Original Appointment-----

From: Edwards, Alyssa

Sent: Tuesday, August 23, 2016 3:08 PM

To: Edwards, Alyssa; 'Emily Partin'; Adam Wells; Julie Lawhorn; Phil McMullan; burtonwebb@Upike.edu; andrewbuzzelli@UPIKE.edu; Miles Ballogg; **Ex. 6 - Personal Privacy** THOUCK@GREENVILLECOUNTY.ORG; Carroll, Ann; Patrick Kirby; trowan@eda.gov; Logan, Tony - RD, Columbus, OH; Danielle.M.Arigoni@hud.gov; Evelyn Britton; Bill Price; Petitjean, Herb (EEC); Ruhl, Suzi; Burney, Jacob; Elizabeth Limbrick; **Ex. 6 - Personal Privacy**

Subject: B2H Session and Community Convening "All Hands" Call

When: Thursday, September 01, 2016 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Call-in: **Ex. 6 - Personal Privacy**

Good afternoon,

Please reserve this time for a final pre-conference call to review elements and roles, agenda forthcoming.

Best wishes,
Alyssa

Alyssa Edwards

Program Analyst

US Environmental Protection Agency / Office of Environmental Justice

1200 Pennsylvania Ave., NW, Washington, DC 20004

Tel: 202-564-0473

Website: <https://www.epa.gov/environmentaljustice>

Subscribe to the [EJ ListServ](#) for up-to-date information about upcoming meetings, funding opportunities, events, and other EJ topics.

Revitalizing Central Appalachia through Brownfields to Healthfields
2016 Central Appalachian Regional Brownfields Summit

September 8, 2016 (3:00-4:30)

Draft final (8-31-16)

Overview: Identifying brownfields and transforming remediated brownfields and vacant properties into healthy end uses that contribute to creating healthier communities is a fresh and inventive economic development strategy that serves low-income, minority and tribal families living in environmentally overburdened neighborhoods throughout Central Appalachia. *Brownfields to healthfields* is successful approach that strengthens community health, equity, sustainability and resiliency for overburdened and underserved populations by increasing access to health care and settings that allow healthier choices for recreation and healthy foods, education and jobs. Learn how this progressive, evidence-based program can advance your community revitalization efforts.

I. Welcome, Purpose and Overview (3:00 PM)- 10 minutes

Moderator and B2H Overview: Suzi Ruhl, OEJ, US EPA; Rural Committee of the Federal Interagency Working Group on Environmental Justice

II. Community Inspiration : Success Stories in Progress (3:10 PM)-20 minutes

Emily Partin, South Cumberland Learning and Development Center, Grundy County, TN
Matt Hepler, Southern Appalachian Mountain Stewards

III. Resource Information: (3:30 PM)-20 minutes

Dr. Burton Webb, PhD, President, University of Pikeville (UPike)
Julie Lawhorn, APPALACHIAN REGIONAL COMMISSION
Phil McMullan, Appalachian Management Systems, LLP

IV. Partner Implementation: Small Group Exercise (3:55 PM)- 30 minutes

➤ Table Topics and Leads

- **Health:** Andrew R. Buzzelli, OD,MS, Founding Dean, UPike KY College of Optometry; Miles Ballogg, ATSDR BROWN/Cardno, Emily Partin, South Cumberland Learning and Development Center; Ann Carroll, US EPA OBLR
- **Renewable Energy:** Rich Altman, Volpe Center Commercial Alternative Aviation Fuel Initiative; Tony Logan, USDA-RD, Ohio Director; Julie Lawhorn, ARC
- **Recreation/Healthy Foods/Healthfields:** Phil McMullan, Ty Houk; Greenway South Carolina; Matt Hepler, Southern Appalachian Mountain Stewards

➤ Promising Practices Report Out

Moderator, Suzi Ruhl, OEJ, US EPA; Rural Committee of the Federal Interagency Working Group on Environmental Justice

V. Wrap Up and Next Steps (3:20 PM)- 10 minutes

Ann Carroll, US EPA OBLR

B2H Plus in Central Appalachia: Collaborative Community Convening
September 7, 2016 @ 6:00-7:45
Agenda (final draft)

Transforming remediated brownfields into healthy end uses is a fresh and inventive economic development strategy that serves lower-income families living in environmentally overburdened neighborhoods across the country. Known as Brownfields to Healthfields (b2H), this community driven approach leverages federal and state resources to establish health care clinics, local healthy food hubs, renewable energy projects, and parks and trails, among other end uses of brownfields redevelopment. OEJ is convening community leaders, academic institutions, brownfields consultants, private sector developers, and government partners to explore opportunities for collaboration that promote community health, economic and environmental vitality. Join us for this lively event to launch new collaborations across Central Appalachia.

I. Welcome & Purpose (6:00 PM) 5 minutes

- Suzi Ruhl, US Environmental Protection Agency Office of Environmental Justice and Federal Interagency Working Group on Environmental Justice Rural Committee
- Herb Pettijean, Kentucky Brownfields Coordinator

II. Introductions (6:05 PM) 15 minutes

- Patrick Kirby, Northern West Virginia Brownfields Assistance Center

Participants will introduce themselves by name, organization and location

III. Spotlight on Impacted and Underserved Communities (6:20) 10 minutes total

- Adam Wells, Appalachian Voices
- Bill Price, Sierra Club
- Emily Partin, South Cumberland Learning and Development Center

IV. Lead by Success (6:30) 15 minutes total

- Academic:
 - Burton Webb, PhD, President, University of Pikeville (UPike)
- Private Sector:
 - Miles Ballogg, Cardno/ATSDR BROWN
- Public Private Partnership:
 - /Rich Altman, DOT-Volpe CAAFI

V. Roundtables (6: 45) (45 minutes)

- Three topics addressed at five breakout tables:
 - Challenges in Your Community- Environmental, Economic, Health
 - Opportunities to Address Challenges Through a b2H Lens
 - Unique Partnering Opportunities
- Table Leads: Community, Subject Matter Experts, Facilitator (see attached chart)
- Time Allotment: 15 minutes for each topic then table leads will switch tables

VI. Gathering to Launch (7:30) 10 minutes

Elizabeth Limbrick, New Jersey Institute of Technology

- Report Out from Tables
- Identification of Next Steps

VII. **Closing/Adjourn (7:40) 5 minutes**

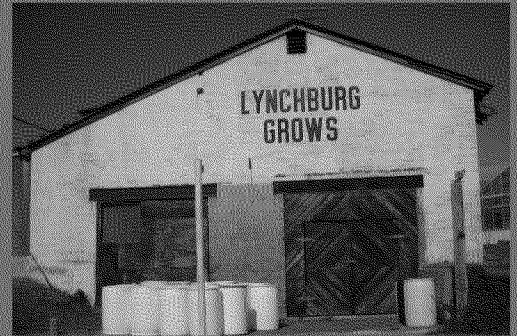
- Patrick Kirby, Northern WVa Brownfields Assistance Center

B2H Plus in Central Appalachia: Convening Community Collaborations
September 7, 2016 @ 6:00-7:45
Table Chart

Table 1 <i>Challenges in Your Community</i>	Table 2 <i>Challenges in Your Community</i>	Table 3 <i>Opportunities to address challenges through a b2H lens</i>	Table 4 <i>Opportunities to address challenges through a b2H lens</i>	Table 5 <i>Unique partnering opportunities</i>	Table 6 <i>Unique partnering opportunities</i>
<p>Stay at Table:</p> <p>Facilitator: Patrick Kirby</p> <p>Community Voice: Carol Judy, Fair Trade Appalachia (invited)</p> <p>Rotate:</p> <p>Subject Matter Experts: Andrew R. Buzzelli, OD,MS, Founding Dean, UPike KY College of Optometry</p> <p>Government: Ann Carroll, EPA OBLR</p>	<p>Stay at Table:</p> <p>Facilitator: TBD (Kirby staff)-</p> <p>Community Voice: Matt Helper, Southern Appalachian Mountain Stewards</p> <p>Rotate: Subject matter Experts: Julie Lawhorn, ARC</p> <p>Government: Danielle Arigoni, HUD</p>	<p>Stay at Table:</p> <p>Facilitator: Alyssa Edwards</p> <p>Community Voice: TBD</p> <p>[Rotate] Subject Matter Experts: Miles Ballogg, Cardno/ATSDR BROWN</p> <p>Government: Dennis Oden, US GSA (invited)</p>	<p>Stay at Table:</p> <p>Facilitator: TBD (Kirby staff)-</p> <p>Community Voice: TBD Adam Wells, Appalachian Voices</p> <p>[Rotate] Subject Matter Expert/Government : Tony Logan, USDA-RD Ohio</p>	<p>Stay at Table:</p> <p>Facilitator: Elizabeth Limbrick</p> <p>Community Voice: TBD Emily Partin, South Cumberland Resource and Development Center</p> <p>[Rotate] Subject Matter Experts: Rich Altman, DOT-Volpe CAAFI</p>	<p>Stay at Table:</p> <p>Facilitator: TBD</p> <p>Community Voice: TBD</p> <p>[Rotate] Subject Matter Experts: Phil McMullan (AMS)</p> <p>Government: TBD</p>

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EPA's Office of Environmental Justice Brownfields to Healthfields Group Exercise



Instructions for Speed Dating: The audience is divided into three groups based on interest- Health, Renewables and Recreation/Healthy Foods/Healthfields. The audience will sit at their interest table(s) for the entire session. The Group Exercise will begin with each participant introducing themselves and their affiliation. Next, the subject matter expert(s) will provide opening remarks about the topic, including a summary of a success model and promising practices. Then, the facilitator will lead the group in discussing the questions. A reporter will record remarks and present top 1-2 observations during the Promising Practices Wrap-up.

Topic: Path

Prompt questions:

- What are the community problems to be addressed?
- What are potential solutions to the problem provided through brownfields redevelopment?
- What results are expected?
- What evidence is available to support these responses?



Topic: Place

Prompt Questions:

- Where is the potential brownfields project located?
- Is it one property or an area?
- What is the context:
 - conditions of the property
 - exposure routes to humans from the property
- What evidence is available to support these responses?

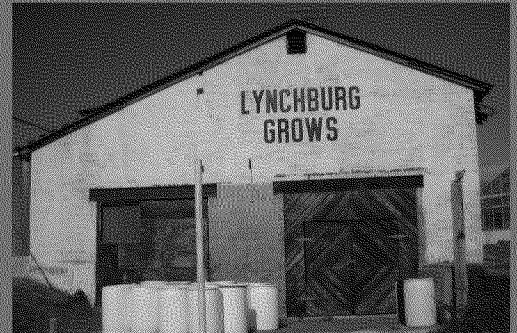
Topic: People

Prompt Questions:

- Who will benefit from the proposed project?
- How will local populations be impacted- positively and negatively?
- Who is engaged with the project?
- Who else needs to be involved in the project?
- What evidence is available to support these responses?

For more information about environmental justice at EPA, visit: <https://www.epa.gov/environmentaljustice>
For information on the Environmental Justice Interagency Working Group,
visit: <https://www.epa.gov/environmentaljustice/federal-interagency-working-group-environmental-justice-ej-iwg>

EPA's Office of Environmental Justice Brownfields to Healthfields Group Exercise



Instructions for Speed Dating: The audience is divided into three groups. At the sound of the buzzer, each group will go to a designated table. At each table, the group will spend 15 minutes discussing the questions. A facilitator will guide the discussion. Subject matter experts will be at each table to catalyze the conversation. A reporter will record remarks and present top 1-2 observations during the Promising Practices Wrap-up.

Table 1 Topic: Challenges in Overburdened and Underserved Communities

Prompt questions:

- What problems of the community may be associated with brownfields?

How do these problems relate to environment, health, and economic vitality?



Table 2 Topic: Opportunities from Brownfields Redevelopment

Prompt Questions:

- **What opportunities are provided through brownfields redevelopment?**
- **How do these opportunities relate to environment, health, and economic vitality?**

Table 3 Topic: Unique Partnerships for Successful Collaborations

Prompt Questions:

- **What types of stakeholders -- traditional and non-traditional --are needed for success?**
- **How can we ensure that overburdened and underserved populations are included in decision-making and receive benefits?**

For more information about environmental justice at EPA, visit: <https://www.epa.gov/environmentaljustice>
For information on the Environmental Justice Interagency Working Group,
visit: <https://www.epa.gov/environmentaljustice/federal-interagency-working-group-environmental-justice-ej-iwg>

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Marianne Engelman Lado
Sent: Tue 9/20/2016 1:03:21 AM
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Blessings
Mustafa

Sent from my iPhone

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Marianne

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Please share the link with stakeholders who would benefit from participating in the Summit:
<http://www.survivingtothrivingsummit.org><<http://www.survivingtothrivingsummit.org>>

Blessings
Mustafa

Sent from my iPhone

To: Jeffery Wolfe [Ex. 6 - Personal Privacy]
Cc: Glencie Rhedrick [Ex. 6 - Personal Privacy] Joel Segal [Ex. 6 - Personal Privacy] Russell Greene [Ex. 6 - Personal Privacy] Paul Alexander [Ex. 6 - Personal Privacy] Barbara Arnwine [Ex. 6 - Personal Privacy] Rev Sheldon Shipman [Ex. 6 - Personal Privacy] Rev Yearwood[rev@hiphopcaucus.org]; Justin Talbot-Zorn [Ex. 6 - Personal Privacy] Keane Bhatt[keane@democracycollaborative.org]; Jay Nightwolf [Ex. 6 - Personal Privacy] hfulbright@gcgloballearning.com[hfulbright@gcgloballearning.com]; Victoria Collier [Ex. 6 - Personal Privacy] [Ex. 6 - Personal Privacy] tc@hiphopcaucus.org[tc@hiphopcaucus.org]; Nancy Freeman [Ex. 6 - Personal Privacy] Ali, Mustafa[Ali.Mustafa@epa.gov]; Kasher Communications [Ex. 6 - Personal Privacy] Michael Zytkow[michael.zytkow@greenpeace.org]; tyler@thesolutionsproject.org[tyler@thesolutionsproject.org]
From: Britten Cleveland
Sent: Tue 12/1/2015 4:07:53 PM
Subject: Re: Congressional Progressive Caucus Introduces Climate Change Resolution on First Day of UN Climate Conference

Kudos to Joel and all of you AWESOME people at JAMN and all who have worked to make this happen! Keeping the dream alive!

On Mon, Nov 30, 2015 at 11:19 PM, Jeffery Wolfe <[Ex. 6 - Personal Privacy]> wrote:

Fantastic! Glad to be part of it.

Meeting WH staff and several Senators tomorrow as part of solar industry CEO delegation. Hope to make good progress on moving the industry forward.

Jeff Wolfe

[Ex. 6 - Personal Privacy]

On Mon, Nov 30, 2015 at 11:13 PM, Glencie Rhedrick [Ex. 6 - Personal Privacy] wrote:

To our National Director of JAMN, great work! Just as a America must step up, we, too, must be ready to respond. This is the momentum we need to set JAMN on fire throughout the US. Again great work!
Blessings!

On Mon, Nov 30, 2015 at 10:12 PM, [Ex. 6 - Personal Privacy] wrote:

Please read below the press release: forward together!

Peace,

Joel Segal

National Director

JAMN

Congressional Progressive Caucus Introduces Climate Change Resolution on First Day of UN Climate Conference

11/30/15

Washington, D.C. – The co-chairs of the Congressional Progressive Caucus, Reps. Raúl M. Grijalva (D-AZ) and Keith Ellison (D-MN), today are introducing a House Resolution that sets aggressive national priorities for combatting climate change. The resolution calls for significant goals of near zero greenhouse gas emissions by 2050, 50 percent of electricity to be derived from renewable sources by 2030 and a transition to 100 percent renewable energy by 2050.

“As world leaders from more than 190 nations unite in Paris today around the common goal of addressing climate change, it is clear that the United States must lead now or risk being left behind. If we ignore the need for new and innovative energy in the 21st century, those industries and jobs will ultimately develop in the nations that act without hesitation. Our leaders have a responsibility to the American people to encourage job growth in new and developing fields; to modernize our infrastructure in a way that meets the energy demands of the future; and to provide stability and job training to every worker whose livelihood fades as we transition away from fossil fuels.

“The scope of climate change is global, but its impacts are local for the countless people who already face raging floods, extended droughts, heatwaves and rising sea levels. The dangers extreme weather creates – from food shortages to life-threatening storms – are often felt first and hardest among vulnerable communities that lack the means to respond or protect themselves.

“Meeting these challenges requires leadership on a global scale that the United States is uniquely able to provide, but we must find the political will to act. We can combat the most dangerous impacts of climate change and create millions of jobs in the process if we commit to transition to clean, renewable energy and a fair, sustainable economy that supports green jobs, full employment and fair wages. One nation alone cannot solve the problem of climate change. We must do our part and work together with countries around the world to take bold action against this continuing threat.”

Full text of the Congressional Progressive Caucus climate change resolution is available [here](#).

Sent from Surface

From: Ex. 6 - Personal Privacy

Sent: Monday, November 30, 2015 5:20 PM

To: [Russell Greene](#), [Paul Alexander](#), [Barbara Arnwine](#), [Glencie Rhedrick](#), [Jeffery Wolfe email](#), [Rev Sheldon Shipman](#), [Rev Yearwood](#), [Justin Talbot-Zorn](#), [Keane Bhatt](#), [Jay Nightwolf](#), hfulbright@gcgloballearning.com, [Victoria Collier](#), Ex. 6 - Personal Privacy tc@hiphopcaucus.org, [Nancy Freeman](#), [Ali](#), [Mustafa](#)

Cc: [Kasher Communications](#), [Michael Zytow](#), [Britten Cleveland](#), tyler@thesolutionsproject.org

Dear Friends:

Happy Thanksgiving!

Rep. Raul Grijalva, Rep. Keith Ellison, and the Congressional Progressive Caucus have introduced a climate justice resolution that will have a significant impact on the climate justice movement; and the Congress. **Please read below the below press release announcing the introduction of the first of its kind climate justice “Sense of the House Resolution.” Way to go team!**

Also proud and honored to announce that world renowned climatologist Lester Brown, author of World On the Edge, Plan B 4.0, Transitions, the winner of the United Nations Environmental Prize, and Japan's Blue Planet Prize has agreed to serve as Honorary Chair of the Justice Action Mobilization Network Advisory Board if asked. And, Rep. Alma Adams introduced a critically important Sense of the House Resolution that calls for an end to involuntary homelessness by 2020--which means the climate justice movement can organize for green affordable housing and jobs.

Peace and blessings,
Joel Segal, National Director, Justice Action Mobilization Network.

<http://cpc.grijalva.house.gov/press-releases/congressional-progressive-caucus-introduces-climate-change-resolution-on-first-day-of-un-climate-conference/>

<http://cpc-grijalva.house.gov/uploads/Climate%20Resolution.pdf>

--

Rev. Glencie Rhedrick, M.S. M.DIV
Immediate Past President Mecklenburg Ministries

Ex. 6 - Personal Privacy

www.meckmin.org

Ex. 6 - Personal Privacy

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Britten Cleveland | Chapter Organizer

North Carolina Sierra Club

Charlotte, NC

Ex. 6 - Personal Privacy

www.CleanPowerPlan.org

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Marianne Engelman Lado
Sent: Mon 9/19/2016 11:07:47 PM
Subject: RE: 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities

Thanks.

It looks like registration is free but is there any funding available for travel and lodging for participants who might not otherwise be able to afford to go? I just wanted to check before circulating the announcement, which I'm sure would be of interest to folks.

I look forward to seeing you at the October 5th meeting regarding the impacts of CAFOs on communities in eastern NC.

Best,

Marianne

From: Ali, Mustafa [mailto:Ali.Mustafa@epa.gov]
Sent: Sunday, September 18, 2016 10:44 PM
To: Marianne Engelman Lado
Subject: 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities

Marianne,

I wanted to personally make sure you knew about the 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities [on October 25th](#) & 26th. This inaugural Summit is the first of its kind and specifically focused on identifying resources, technical assistance and economic opportunities for our communities...If you have any questions give me a buzz or email...

Please share the link with stakeholders who would benefit from participating in the

Summit: <http://www.survivingtothrivingsummit.org>

Blessings

Mustafa

Sent from my iPhone

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Jessica Hodge
Sent: Tue 9/29/2015 8:04:54 PM
Subject: RE: Signing ceremony for Refinery Rule

HAHA got it!

-----Original Message-----

From: Ali, Mustafa [mailto:Ali.Mustafa@epa.gov]
Sent: Tuesday, September 29, 2015 3:43 PM
To: Stephanie Maddin
Cc: Jessica Hodge
Subject: Re: Signing ceremony for Refinery Rule

I should have said that Eric Vance is the photographer who took the photos.

Sent from my iPhone

> On Sep 29, 2015, at 3:32 PM, Stephanie Maddin <smaddin@earthjustice.org> wrote:

>

> Thanks so much!!

>

>

> Sent on the new Sprint Network from my Samsung Galaxy S(r)4.

>

>

> ----- Original message -----

> From: "Ali, Mustafa"

> Date:09/29/2015 3:26 PM (GMT-05:00)

> To: Stephanie Maddin

> Cc: Jessica Hodge

> Subject: RE: Signing ceremony for Refinery Rule

>

> Last set...

>

> -----Original Message-----

> From: Stephanie Maddin [mailto:smaddin@earthjustice.org]

> Sent: Monday, September 28, 2015 5:51 PM

> To: Ali, Mustafa

> Cc: Jessica Hodge

> Subject: RE: Signing ceremony for Refinery Rule

>

> Pics would be great!! Please forward to both Jessica and I. She's cc'ed.

>

>

> Sent on the new Sprint Network from my Samsung Galaxy S(r)4.

>

>

> ----- Original message -----

> From: "Ali, Mustafa"

> Date:09/28/2015 5:50 PM (GMT-05:00)

> To: Stephanie Maddin

> Cc: Jessica Hodge

> Subject: Re: Signing ceremony for Refinery Rule

>

> Stephanie,

>
> Unfortunately, we won't be able to do that this time but I can make sure that the Agency Photographer shares the photos from the event as soon as it is finished if that would be helpful?
>
> Blessings
> Mustafa
>
> Sent from my iPhone
>
>> On Sep 28, 2015, at 4:26 PM, Stephanie Maddin <smaddin@earthjustice.org> wrote:
>>
>>
>> Hi Mustafa!
>>
>> We are excited to know Hilton Kelley will be in the room for the signing of the Refinery air toxics rule. Is there an opportunity for anyone from our shop to be present? We mainly want to take pics. I'm recovering from oral surgery so we hope our Clean Air Campaign Manager Jessica Hodge could attend. Please advise asap!
>>
>> Kind regards,
>>
>> Stephanie Maddin
>> Earthjustice
>>
>> Sent on the new Sprint Network from my Samsung Galaxy S(r)4.
>

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Leslie Fields
Sent: Thur 1/21/2016 9:01:31 PM
Subject: Re: Invitation: Meeting with Mustafa Ali at EPA @ Fri Jan 22, 2016 4pm - 5pm
(leslie.fields@sierraclub.org)

Hi Ms. Martin (and Mustafa)

As long as the federal government is open, we plan to come over. Please remind me: which entrance? Also Mustafa agreed to make sure there would be a conference line set up because one of our colleagues would be calling in.

Thanks, Leslie Fields

On Thu, Jan 21, 2016 at 1:26 PM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:

Hi Leslie,

You have a meeting scheduled with Mustafa for tomorrow afternoon. I just wanted to check in with you to see if you want to reschedule for next week or change the meeting to a teleconference due to the impending weather we are expecting tomorrow.

Thanks

Karen L. Martin
Special Assistant to the Senior Advisor for Environmental Justice
Office of the Administrator
U.S. Environmental Protection Agency
martin.karenl@epa.gov
<mailto:Martin.karenl@epa.gov> Room 2226 G WJCS
[202-564-0203](tel:202-564-0203)

-----Original Appointment-----

From: Leslie Fields [<mailto:leslie.fields@sierraclub.org>]
Sent: Tuesday, January 12, 2016 5:43 PM
To: Leslie Fields; Alejandra Nunez; Dean Hubbard; Ali, Mustafa
Subject: Invitation: Meeting with Mustafa Ali at EPA @ Fri Jan 22, 2016 4pm - 5pm
(leslie.fields@sierraclub.org)
When: Friday, January 22, 2016 4:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, DC 20004, United States

[more details »](#)

Meeting with Mustafa Ali at EPA

Meet with M. Ali to discuss economic justice issues in the Clean Power Plan

When

Fri Jan 22, 2016 4pm – 5pm Eastern Time

Where

U.S. Environmental Protection Agency, 1200 Pennsylvania

Ave NW, Washington, DC 20004, United States ([map](#))

Calendar

leslie.fields@sierraclub.org

Who

- Leslie Fields - organizer
-
- Alejandra Nunez
-
- Dean Hubbard
-
- ali.mustafa@epa.gov

Going? **Yes - Maybe - No** [more options »](#)

Invitation from [Google Calendar](#)

You are receiving this courtesy email at the account ali.mustafa@epa.gov because you are an attendee of this event.

To stop receiving future updates for this event, decline this event. Alternatively you can sign up for a Google account at <https://www.google.com/calendar/> and control your notification settings for your entire calendar.

Forwarding this invitation could allow any recipient to modify your RSVP response. [Learn More](#).

<< File: invite.ics >>

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Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Leslie Fields
Sent: Wed 10/21/2015 1:47:26 AM
Subject: Re: National Youth Work Group on Climate Justice

Thanks & got your message. Such a wonderful idea! Ive already forwarded all over! You're doing such a great job!

On Oct 20, 2015 9:12 PM, "Ali, Mustafa" <Ali.Mustafa@epa.gov> wrote:

Environmental Justice & Climate Justice Family,

I wanted to share the information below with you on **the “National Climate Justice Youth Work Group”** we are launching today. I know many of you have been huge supporters of youth and providing opportunities for them to be more engaged on a substantive level on environmental and social justice issues. This National Climate Justice Youth Work Group, is a “first of its kind” opportunity and will hopefully further highlight for many, the incredible innovation, energy and ingenuity that youth bring to the work of addressing climate change. **I hope you will share this opportunity broadly with your networks and youth who may be interested:**

EPA Seeking Young Adults to Serve on NEJAC Youth Work Group on Climate Justice

EPA is seeking young adults, ages 18 to 29, who are involved in climate change efforts and/or advocacy, to participate on this "first of its kind" youth-led advisory work group to assist the National Environmental Justice Council (NEJAC) in developing advice and recommendations to assist EPA in developing best practices to address climate change concerns. EPA recognizes the key role that youth play in bringing awareness to climate change and offering solutions to transform our societies toward a low-carbon and climate resilient future. It is essential that youth have a seat at the table and help inform the hard decisions that must be made that affect so many. Thus, the formation of the NEJAC Youth Perspectives on Climate Justice Work Group seeks to include young people in assisting EPA in addressing climate change concerns.

The work group will explore several issues, including:

- How can EPA effectively engage with youth on climate change and adaptation planning using new resources and tools designed to help communities become more resilient and better protect themselves from the impacts of climate change? What activities and mechanisms (e.g. policy, guidance, or protocol) should EPA consider to authentically engage and work collaboratively with youth, and other interested stakeholders, to identify and address climate change impacts on overburdened and vulnerable communities?
- What best practices, including efforts to address the compounding health vulnerabilities brought on by climate change, can be provided using youth driven projects from across the United States from which results-oriented recommendations can be drawn?

Applications are due **November 30, 2015**

The NEJAC Youth Perspectives on Climate Justice Work Group will be convened in January 2016. We anticipate that the work group will conduct its business primarily through bimonthly teleconference calls. This work group may meet face-to-face once annually. The average workload for the members is approximately 4 to 5 hours per month, which represents a rough estimate of the time members will spend in teleconference calls and reviewing relevant documents.

We are looking forward to working with a geographically diverse group of emerging thought leaders in the climate change space. **Check out the video here: [Your Voice Matters!](#)** Apply now for the new "Climate Justice Youth Work Group."

Check out today's [EJ in Action Blog](#) to read more about why your voice matters.

Learn more about the [Charge](#).

Click [here](#) for the **Membership Application**.

Got **questions?** Check out the [FAQs](#).

<https://www.youtube.com/watch?v=lk0av4rmN4I>

Please share with everyone about this opportunity for our Next Generation of Climate Justice Leaders:

•  **Social Media:**

○ **Twitter:**

▪ **@EJinAction** We're forming a Climate Justice Youth Workgroup to develop innovative strategies to [#ActOnClimate](#). Apply today! <http://go.usa.gov/3SdEQ>

Blessings,

Mustafa Santiago Ali

Senior Advisor to the Administrator

for Environmental Justice & Community Revitalization

Environmental Protection Agency

WJC 2226D

Phone: 202-564-2606

Email: ali.mustafa@epa.gov

To: GreenLeaders (GreenLeaders@rabengroup.com)[GreenLeaders@rabengroup.com]
From: Stephanie Maddin
Sent: Wed 8/27/2014 4:02:24 PM
Subject: FW: Leaving but not going far

New ED level position will be available at USCAN.

From: cac-community-group@googlegroups.com [mailto:cac-community-group@googlegroups.com] **On Behalf Of** Lara Levison
Sent: Wednesday, August 27, 2014 11:41 AM
To: USCAN member business list serve; clean@lists.usclimatenetwork.org; clean-strategy@lists.usclimatenetwork.org; 'Climate Development Listserve'; int-works@lists.usclimatenetwork.org; transportation@lists.usclimatenetwork.org; cac-community-group@googlegroups.com; Deputies list (CADC); 'Clean Energy WG'; uscanstaff-board@lists.usclimatenetwork.org
Subject: Leaving but not going far

Apologies for cross-postings

Dear USCAN members and allies,

Thank you for the opportunity to serve USCAN and the climate community since I came on board in November 2011. I'm writing to let you know that September 5 will be my last day at USCAN.

In mid-September I'll join the staff of Oceana as "Senior Director, Federal Policy." In my new position, I'll be able to remain engaged in the climate movement, since Oceana has a climate and energy campaign.

Because USCAN is in the process of hiring a new executive director, the decision on how to fill my position will be postponed until the new director is on board. In the meantime, Kathleen Mogelgaard of KAM Consulting will bring her many talents to USCAN to cover a number of my responsibilities. I'm sure many of you know Kathleen through her work with Oxfam and other projects. For matters related to USCAN, Kathleen can be reached at kmogelgaard@climatenetwork.org.

I am sad to leave USCAN, but I expect I will continue to cross paths with many of you. I believe deeply in the role of USCAN in building a stronger climate movement, and I hope you will call on me if there are ways I can be helpful.

You can contact me at Oceana starting on September 16 at llevison@oceana.org. You can also reach me at my personal email address **Ex. 6 - Personal Privacy**, cell phone **Ex. 6 - Personal Privacy** or "lifetime" email address **Ex. 6 - Personal Privacy**

Best wishes,

Lara

Lara Levison

Program Director/Domestic Policy Director

US Climate Action Network

Washington, DC

202-957-9010

llevison@climatenetwork.org

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You received this message because you are subscribed to the Google Groups "CAC Community Group" group.

To unsubscribe from this group and stop receiving emails from it, send an email to cac-community-group+unsubscribe@googlegroups.com.

To post to this group, send email to cac-community-group@googlegroups.com.

Visit this group at <http://groups.google.com/group/cac-community-group>.

For more options, visit <https://groups.google.com/d/optout>.

To: Leslie Fields[leslie.fields@sierraclub.org]
Cc: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Martin, KarenL
Sent: Thur 1/21/2016 6:26:18 PM
Subject: RE: Invitation: Meeting with Mustafa Ali at EPA @ Fri Jan 22, 2016 4pm - 5pm (leslie.fields@sierraclub.org)

Hi Leslie,

You have a meeting scheduled with Mustafa for tomorrow afternoon. I just wanted to check in with you to see if you want to reschedule for next week or change the meeting to a teleconference due to the impending weather we are expecting tomorrow.

Thanks

Karen L. Martin
Special Assistant to the Senior Advisor for Environmental Justice
Office of the Administrator
U.S. Environmental Protection Agency
martin.karenl@epa.gov
<mailto:Martin.karenl@epa.gov> Room 2226 G WJCS
202-564-0203

-----Original Appointment-----

From: Leslie Fields [mailto:leslie.fields@sierraclub.org]
Sent: Tuesday, January 12, 2016 5:43 PM
To: Leslie Fields; Alejandra Nunez; Dean Hubbard; Ali, Mustafa
Subject: Invitation: Meeting with Mustafa Ali at EPA @ Fri Jan 22, 2016 4pm - 5pm (leslie.fields@sierraclub.org)
When: Friday, January 22, 2016 4:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, DC 20004, United States

[more details »](#)

Meeting with Mustafa Ali at EPA

Meet with M. Ali to discuss economic justice issues in the Clean Power Plan

When

Fri Jan 22, 2016 4pm - 5pm Eastern Time

Where

U.S. Environmental Protection Agency, 1200
Pennsylvania Ave NW, Washington, DC 20004, United States
([map](#))

Calendar

leslie.fields@sierraclub.org

Who

*

*

*

*

Alejandra Nunez

Dean Hubbard

Going? **Yes - Maybe - No** [more options »](#)

Invitation from [Google Calendar](#)

You are receiving this courtesy email at the account ali.mustafa@epa.gov because you are an attendee of this event.

To stop receiving future updates for this event, decline this event. Alternatively you can sign up for a Google account at <https://www.google.com/calendar/> and control your notification settings for your entire calendar.

Forwarding this invitation could allow any recipient to modify your RSVP response. [Learn More](#).

<< File: invite.ics >>

To: Glencie Rhedrick [Ex. 6 - Personal Privacy]
Cc: Nikisha Glover [Ex. 6 - Personal Privacy] Joel R Segal [Ex. 6 - Personal Privacy]
Paul [Ex. 6 - Personal Privacy] Ben Zion Ptashnik [Ex. 6 - Personal Privacy] Zorn,
Justin[Justin.Zorn@mail.house.gov]; Rev Dr Shipman [Ex. 6 - Personal Privacy] Rev
Sadler [Ex. 6 - Personal Privacy] Peter Wherry [Ex. 6 - Personal Privacy] Justin Talbot-
Zorn [Ex. 6 - Personal Privacy] Ali, Mustafa[Ali.Mustafa@epa.gov]; Rev Sadler [Ex. 6 - Personal Privacy] Victoria
Collier [Ex. 6 - Personal Privacy] Barbara Arnwine [Ex. 6 - Personal Privacy] Jay
Nightwolf [Ex. 6 - Personal Privacy] Jeffery Wolfe email [Ex. 6 - Personal Privacy]
tc@hiphopcaucus.org[tc@hiphopcaucus.org]; Rev Lennox Yearwood[rev@hiphopcaucus.org]; TC
Muhammad, Hip Hop Caucus[terence@hiphopcaucus.org]; Russell Greene [Ex. 6 - Personal Privacy]
From: Britten Cleveland
Sent: Thur 9/3/2015 10:41:12 PM
Subject: Re: Draft JAMN Charlotte Mecklenburg Flyer: Going to Victoria For Graphics and Edits

Yes, please do! I was just throwing in ideas to see what would stick.

On Thu, Sep 3, 2015 at 6:36 PM, Glencie Rhedrick [Ex. 6 - Personal Privacy] wrote:

Are we exploring solutions or sharing. Just something to consider. I am going to play with wording on flyer.

On Sep 3, 2015 6:31 PM, "nglover lcv" [Ex. 6 - Personal Privacy] wrote:

Hello All,
We are updating as we go. Any thoughts on this?

I felt like the language needed something inspiring but I think this might be too wordy. What words can we use to inspire people to come and also let them know the value they'll get from attending? - Britten C.

Charlotte Mecklenburg Town Hall Meeting

Exploring Solutions To Climate Justice, Green Jobs, And Ending Poverty

Saturday, October 3, 2:00pm-5:00pm

INSPIRE: Keynote from national environmental justice leader, Reverend
Lennox Yearwood, Hip Hop Caucus

LEARN: Hear from your elected officials, faith leaders, and national, state,

and local experts on climate change, environmental justice, and ending poverty

ACT: Stand up and voice your opinion on how climate change, pollution, and environmental injustice affect you

COMMUNITY: Join us for food, music, and a unified call-to-action for solutions to insure that all people, regardless of race, live, work, play and pray in a healthy environment

Little Rock AME Zion Church

401 North McDowell Church St | Charlotte | 28204

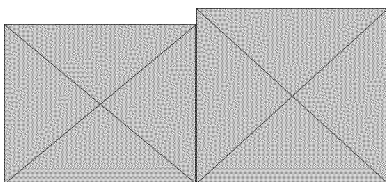
Town Hall Sponsors:

Greenpeace North Carolina, Clean Air Carolina, North Carolina Sierra Club, Justice Action Mobilization Network, Little Rock AME Zion Church, Rev. Sheldon Shipman, Rev. Rodney Sadler, Rev. Peter Wherry, Rev. Glencie Rhedrick

For more information: Joel Segal,

Ex. 6 - Personal Privacy

Nakisa Glover
League of Conservation Voters
www.lcv.org



On Thu, Sep 3, 2015 at 4:43 PM, Glencie Rhedrick wrote:

Ex. 6 - Personal Privacy

Thanks, will work some ideas for flyer

On Sep 3, 2015 4:38 PM, **Ex. 6 - Personal Privacy** wrote:

Friends:

All comments welcome!

Best,
Joel

Charlotte Mecklenburg Town Hall Meeting:

***“Exploring Solutions To Climate
Justice, Green Jobs, And Ending
Poverty”***

(*Food, refreshments, and music provided)

***Where: Little Rock AME Zion Church,
401 North McDowell Church St,
Charlotte, NC 28204***

***When: Saturday, October 3, 2:00pm-
5:00pm***

***Who: Elected Officials, Faith Leaders,
National, State, and Local Experts On
Climate Change, Environmental Justice,
and Ending Poverty***

Town Hall Meeting Sponsors:

***Greenpeace North Carolina, Clean Air
Carolina, North Carolina Sierra Club, Justice Action
Mobilization Network, Little Rock AME Zion Church,
Rev. Sheldon Shipman, Rev. Rodney Sadler, Rev.
Peter Wherry, Rev. Glencie Rhedrick***

****For more information, please contact Joel Segal,***

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Britten Cleveland | Chapter Organizer

North Carolina Sierra Club

Ex. 6 - Personal Privacy

www.CleanPowerPlan.org

To: Congdon, Rachel[Congdon.Rachel@epa.gov];
donele@greendoorinitiative.org[donele@greendoorinitiative.org]; kshahyd@nrdc.org[kshahyd@nrdc.org];

Ex. 6 - Personal Privacy

rubin.patterson[Ex. 6 - Personal Privacy]
sydney@greenforall.org[sydney@greenforall.org]; Grafton, Bernadette[Grafton.Bernadette@epa.gov];
Pendse, Sabina[Pendse.Sabina@epa.gov]; phull@chpc2.org[phull@chpc2.org];
jose@comingcleaninc.org[jose@comingcleaninc.org]; Ex. 6 - Personal Privacy Ali,
Mustafa[Ali.Mustafa@epa.gov]; Wilson, Holly[Wilson.Holly@epa.gov]; King,
Marva[King.Marva@EPA.GOV]; Timothy Fields (tfields@michaelbaker.com)[tfields@michaelbaker.com];
Beard, Sharon (NIH/NIEHS) [E][beard1@niehs.nih.gov]; James Frederick
(jfrederick@usw.org)[jfrederick@usw.org]; Dean Hubbard[dean.hubbard@sierraclub.org]
Cc: Cecelia A Knox[knoxca@pgcc.edu]; Foti, James - ETA[Foti.James@dol.gov];
larry.williams.jr@sierraclub.org[larry.williams.jr@sierraclub.org];
tfields@michaeldbaker.com[tfields@michaeldbaker.com]

From: Larry Williams Jr

Sent: Fri 8/12/2016 1:03:09 PM

Subject: Re: Just Transition Workforce Development Training Track for the 2016 National Funding and
Resources Training Summit to Revitalize Vulnerable Communities
[Just Transition Report.pdf](#)

Hey Khalil,

I'm glad you brought this perspective up. Those BLS predictions on Green Jobs and unionization rates are projected based on current trends. It could be valuable to share your view as well as others so that folks can see the spectrum of opinions.

The Sierra Club Labor and Economic Justice program for example takes a very proactive view on the the labor movement and while we agree that training without creating jobs for workers is pointless, we can be part of this process as well. This is why I suggested the speakers I did including labor leaders, educators from Berkeley who have done studies on job creation, and Jason Walsh who runs the POWER grant program that has the potential to create jobs in low income communities and communities of color.

We also believe progressive campaigns like Fight for \$15 have been successful and solution oriented in relation to low wage service jobs and that unionization still has a place in the conversation.

As for the term, "Just Transition" you very smart in pointing out the differing views of what this term actually means. I've attached a short report by the Labor Network for Sustainability where they interviewed various organizing networks, grass roots organizing, labor and climate groups about their definition of the term. It also explores the history of the term going back to the Atomic Workers union.

While I believe groups like NRDC and Sierra Club can have a part in this movement, we can also step back at times and allow the folks doing this work to share their ideas. That may be a good way to approach this Just Transition track.

Lastly, I think you're absolutely right that we need to be thinking clearly about these realities, but I would add I think we should be progressive about our potential solutions. I hope we can have this discussion across the Track because it would make for a great conversation / debate.

LLWJ

On Thu, Aug 11, 2016 at 6:12 PM, Shahyd, Khalil <kshahyd@nrdc.org> wrote:

Hello all,

Thanks for the productive call today. There are a couple of things.

As I've stated previously, I think we need to make sure to center the discussion in the labor market realities of various communities and the overall economy. I would also suggest that the title of the track read something like, "Just Transition and Poverty Alleviation". Having the poverty target is important because otherwise there is no real benchmark by which to value the labor market policies. I can write/say more on that later.

It appears we all come in with an assumption that jobs (good jobs) will just be there. However, every labor market project released by the BLS predicts that service sector jobs will dominate the labor market for the next 30-50 years with or without green jobs. At some point we need to reconcile the green jobs discussion with the facts of the existing economy and the labor market. Overall, it is also projected that labor as a sector will continue to see declines in union rates and to reap declining shares of the nation's productivity meaning less to spread around as wages.

And again, particularly for workers of color, we can't talk about green jobs or just transition for workers without somehow discussing and address discrimination in the labor market. Trying to reinforce the notion that training is the issue can be condescending to workers who consistently face discrimination regardless of their training or educational background.

If we want a different type of job projection, the economy and the workforce will need a great deal more than workforce training to make that happen. Unless the green economy brings with it the type of structural and policy reforms needed, it will simply produce jobs within the existing structure and wage scale of the current labor market that is largely antagonistic to labor.

Also, when we talk about the transition to a green economy we largely focus on direct job creation by sector. However there remains an invisible labor market in the indirect and induced job markets that tend to be service oriented, unprotected and at the lower end of

the wage scale. (Some estimate that for every middle class job produced 3-5 service sector jobs are needed to service that middle class consumer).

Every large scale industrial transition in society has shed the larger portion of the primary labor force because as technology advanced the labor intensity of the primary economic sectors is reduced. Think human bio-power and animal traction to coal/steam to oil/gas to the pending shift to renewable energy. More attention also needs to be paid to how labor markets work in different types of economies and communities to truly understand the opportunities, and impacts of a green transition on workers.

We have to be able to think clearly about these realities and ensure that others understand it as well, if funding resources will adequately address the challenges that confront the nation in providing sustainable livelihoods for all.

Khalil Shahyd – Project Manager

Urban Solutions Program

Natural Resources Defense Council

1152 15th Street NW, Washington, DC 20005

|202.513.6264| <http://www.nrdc.org> | kshahyd@nrdc.org

<http://www.energyefficiencyforall.org/>

<https://www.nrdc.org/experts/khalil-shahyd>

From: Larry Williams Jr [<mailto:larry.williams.jr@sierraclub.org>]

Sent: Thursday, August 11, 2016 5:01 PM

To: Hughes, Chip (NIH/NIEHS) [E]; Shahyd, Khalil; Beard, Sharon (NIH/NIEHS) [E]

Cc: Dean Hubbard

Subject: Re: Just Transition Workforce Development Training Track for the 2016 National Funding and Resources Training Summit to Revitalize Vulnerable Communities

Hey folks,

Thanks again for including me on this call and in the planning process. Here at the ideas I put forward so far:

Three buckets that I had generally:

- Pre apprenticeships, readiness, apprenticeships (identifying people who can make the apprenticeship and who could be involved)
- Breaking down color bar in trades
- Importance of a job being a good job (livable wages, family sustaining) -(union)

Suggestion of some folks who could be great additions to planning committee:

Heat of CBTU Carat Team - Payton Wilkins - Payton Wilkins **Ex. 6 - Personal Privacy**

Bill Fletcher (Labor Leader - well known activist) - Bill Fletcher Jr
Ex. 6 - Personal Privacy

IBEW Minority workers (EWMC)

Labor Network for Sustainability - Joe Ulehine

Folks who could be great speakers we could connect you with:

Berkeley Labor

Michael gurrero - CJA?

Brad Markel AFL-CIO

Jose Bravo - CJA

Art Shanks - Cypress Mandela Training Center

Jason Walsh - White House

Coalition of Black Trade Unionist - CARAT Team

Please let me know if any questions or other ways I can help.

Thanks

On Thu, Aug 11, 2016 at 4:49 PM, Hughes, Chip (NIH/NIEHS) [E]
<hughes3@niehs.nih.gov> wrote:

Track #1 Planning team,

Thanks for everyone for joining in on our second planning call. I think we have tremendous energy, resources and enthusiasm for our track. Before our next call we will send notes and create a description of our track and identify key resources for sharing.

We will have our third planning call on Thursday, August 18th at 4:30 PM. I hope most folks can make it.

Our call-in number is:

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Much thanks to everyone for sharing! Stay cool.

Chip@NIEHS

The discussion highlights from the first overall summit planning call were as follows:

- The Summit originated because EPA has heard a lot of input from community leaders about the need for better community access to Federal agency tools and resources.
- This requested need led to the creation of the three Summit tracks on workforce development and training; financial resources and business development; and health and environmental technical training, education, and outreach.
- EPA will be sending a C-SPAN video to the Track Co-leads on "Climate Justice and Communities".

- EPA is encouraging the private sector and Federal agencies to sponsor invitational travel for community stakeholders.
- EPA wants the Track Co-leads to decide what topics/content, and format they want to cover under their Track.
- The primary focus of the Summit is what can we offer during each Track to benefit vulnerable communities.
- The Summit is being planned for 250 participants, with at least 100 being community stakeholders.
- Remote access may be provided to some portions of the three Tracks.
- If a training session is conducted during portions of a Track, they may want to videotape this for future use.
- They want the Track Co-leads to focus now on the most important content for each Track.
- Some webinars may be conducted on some Summit topics before the Summit.
- It may be possible to incorporate some follow-up from the Summit into 2017 national meetings, e.g., National Environmental Justice Conference, and National Brownfields Conference.
- The Summit will be held at the Crystal City Marriott Hotel in Arlington, VA.

Questions asked, answered, and commitments for next steps include the following:

- Do we have flexible to multiple sessions in the specific time allotted in our tracks – fyi from the 9:30 – 10:30 session do we only have space for one session or do we have space for multiple sessions? RESPONSE: 1 session per time slot
- Follow-up question – if one track is having a 90 minute session and another track is having a 60 minute session simultaneously – Show is that going to match up as work? RESPONSE: We should have regular team co-lead calls so can assure conciseness and flexibility across tracks. They agreed.
- Will have multiple teleconference lines at use for our tracks that are toll free for communities? RESPONSE: This is my line we are currently on and it's toll free and available for your use. NEXT STEPS: I will look into finding (hopefully among EPA staff) one toll free line for use by each team.
- This has been resolved and each team has a toll-free number for their use.
- Need to understand some of the logistics better? Need guidance on hotel room space? Need guidance on paying for speakers? RESPONSE: Right now we have funding

to cover at least 20 speakers (for the entire Summit). We are looking for other opportunities to bring communities to the Summit (e.g., foundations, IWG agencies, large green groups, etc.) NEXT STEPS: Holly and I will get back to co-lead re logistics

- This is a work in process and we are continuing to work on it. Thanks to all of you and in some cases your new team members who are assisting us with finding ways to bring in more community leaders.

- Are we allowed to have posters in the ECO Café instead of table displays?
RESPONSE/NEXT STEPS: Holly and I will get back to co-leads

- Holly says ABSOLUTELY!

- Question asked whether to decouple “National financial resources” away from business development. RESPONSE: Would like co-leads to first discuss with the rest of their team. Originally it was federal financial resources because communities wanted access and information on this; then several team members thought it should be broader than federal. Chip asked could we have a paragraph on what we envision each track should cover so they would have more guidance. NEXT STEPS: We (Holly and I) will work with Mustafa to provide more context to the track titles.

- I have a draft in with Mustafa at the moment and will provide it to you later. However, since he will be on your first calls, he will also provide verbal context that we will then take and add to my draft.

While I support the concept of “just transition” in theory, I tend to feel it is too general or perhaps too specific to the experience of certain communities and leaves out many communities of color who were never fully integrated into industrial economy and have little to “transition” from.

Further, when we talk about “just transition”, the policy and programmatic responses tend to emphasize workforce training for displaced workers. But training means little for African-American workers who continue to face systematic discrimination and isolation in the labor market and Latino workers who experience labor crowding into the bottom rung sectors of employment.

At the community scale, our communities lack the enterprises and economic markets (this point would be captured in the entrepreneurship track) that would employ us and allow us to build wealth in the green economy. In many ways our communities share more in common with “developing” nations than industrial (and post-industrial) communities who must now transition. In many ways we are still trying to “develop” economies, employ labor forces and pull people out of poverty. We operate in very different labor and capital markets from the typical white worker or small business and it requires a very different approach from transition.

In short summary of my thoughts on the language around “just transition”; I would propose

Follow Up Flag: Follow up

Flag Status: Flagged

Welcome to the work team for planning the Just Transition Workforce Development Training Track at the upcoming 2016 National Funding and Resources Training Summit to Revitalize Vulnerable Communities, which is scheduled for October 25-26th in DC.

We would like to hold an initial planning call to brief the group, hear from our EPA partners and set up a schedule for planning sessions and lining up speakers and resource folks.

Have a great weekend and stay cool!

Chip Hughes

NIEHS WETP

Ex. 6 - Personal Privacy

--

Larry Williams Jr.

Labor & Coal Coordinator, Sierra Club Labor Program

Vice-President, John Muir Local 100

602-635-8504

<http://www.sierraclub.org/labor-program>

"I'm not saying I'm gonna change the world, but I guarantee that I will spark the brain that will change the world." -2Pac

--

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“Just Transition” What Is It?

An Analysis of Language, Strategies, and Projects

A Joint Project of:

Labor Network for Sustainability
11 Pine Avenue
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Introduction

We are now one-sixth of the way through the twenty-first century and well into the greatest economic transition ever experienced -- one that will dwarf all that came before this one. This transition includes energy, creating a carbon-neutral economy, communications, manufacturing, transportation, health care, waste management, and more.

This transition has already produced road-kill with many thousands of workers thrown on the scrap heap and disintegrating communities -- with no help in the offing for them. So many individuals and groups are now asking how we organize society, our economy, and our politics in such a way that our institutions serve the people, rather than capital.

The “just transition” frame is being used by an increasing number of organizing networks, grassroots organizations, groups affiliated with organized labor, and environmental organizations. This report aims to assess the notion of just transition, how it is being used, what kinds of ideas and approaches are surfacing for short and long-term strategies, and what kinds of relationships groups are developing in pursuit of a just transition. Its purpose is to open a broad and respectful discussion about the varied ways the “just transition” frame is being used, and how it can contribute to a shared vision of how to make the transition we face a just transition.

This report is based on 17 interviews conducted between October, 2015 and March, 2016 by Christina Roessler, accompanied at times by Joe Uehlein and Richard Healey. Interviewees were offered the opportunity to revise their quotations and their revisions are included in this draft. This report represents a preliminary effort based on a limited number of interviews and a small amount of additional research. Leaders were interviewed from the following groups:

Organizing Networks

- ☐ Climate Justice Alliance
- ☐ GreenWave
- ☐ National People’s Action
- ☐ New Economy Coalition

Grassroots organizing

- ☐ ALIGN: The Alliance for Greater New York
- ☐ Asian Pacific Environmental Network
- ☐ Buffalo PUSH
- ☐ Kentuckians For The Commonwealth
- ☐ Movement Generation

Labor

- ☐ AFL-CIO
- ☐ BlueGreen Alliance
- ☐ Labor Network for Sustainability

- Oregon AFL-CIO

Environmental

- North Carolina League of Conservation Voters
- Sierra Club

Part I, “History,” briefly lays the historical background of the “just transition”

“1. Backstory: Jobs based on ~~Original~~ historical research, traces the idea of a planned transition from its early roots in the GI Bill of Rights, which helped millions of veterans transition from World War II to peacetime education and employment, through proposals from the Cold War-era peace movement for planned conversion from a military to a peacetime economy.

“2. Superfund for ~~sunworkers~~” the development, initiated by Oil Chemical, and Atomic Workers leader Tony Mazzocchi, of a plan initially called “superfund for workers” but soon dubbed “just transition,” “a new start in life” for threatened by environmental policies.

“3. Environmentalists and transition” describes the adoption of the concept of the environmental movement.

“4. Just transition: Just a fancy funeral?” describes the resistance “just transition” idea within much of organized labor.

“5. Climate justice,” describes the adoption of the term “just transition” reinterpretation by the environmental justice and climate justice movements.

Part II, “Analysis,” explores some of the efforts to utilize “just

“6. Using the ~~language transition~~” illustrates some of the ways that language is currently being used.

“7. Unifying vs. divisive effects” lays out interviewees’ comments on transition language on different groups and their relationships.

“8. Policies” presents a preliminary sketch of policies advocated to objectives.

“9. Just transition in practice” - ~~case studies of efforts to embody~~ presents transition ideas in concrete social experiments.

The “Conclusion” presents a few reflections.

“Just Transition Core Elements” presents a list generated by an L meeting in Washington, DC April 29 of people who were interviewed for the report.

This report represents a collaboration of the Labor Network for Sustainability and the Grassroots Policy Project. The project manager and interviewer was Christina Roessler. Support has been provided by the One World Fund and by the Chorus Foundation.

Part I: History

1. Backstory: Jobs with Peace

At the end of World War II it was widely feared that the end of wartime military spending would send the US economy back into the Great Depression. Economic planning for reconversion to a peacetime economy and the GI Bill of Rights, which provided veterans up to four years of tuition and a living wage, helped forestall mass unemployment and economic dislocation.

During the Cold War every recession was met with an increase in military spending – usually justified by an international crisis but effectively serving to restore economic growth. Many in the peace movement concluded that to end the arms race it would be necessary to ensure jobs and economic prosperity in some way of Keynesianism.” Industrial engineer and peace activist Seymour Melman argued that planned conversion to a peacetime economy could replace the “permanent economy.” Economic conversion to the peace movement program and peace activists reached out to labor unions on that basis. A Jobs with Peace Campaign organized referendums calling for Jobs with Peace in 85 cities.¹ A more radical conversion-oriented politics, influenced by the German Greens, aimed to “concerns of material well-being, antimilitarism, ecological balance, and general social renewal” into a project that could unify diverse movements around

¹ Jill Nelson, “Jobs with Peace,” in Jeremy Bullock and Tim Costello, *Building Bridges: The Emerging Grassroots Coalition of Labor and Community* (New York: Monthly Review Press, 1990.) When the Cold War came to an end after 1989, newly-elected President Bill Clinton began planning for major public investment in conversion to an economy with reduced military spending, but they were forestalled by the austerity policies advocated by Robert Rubin and other Clinton officials with Wall Street backgrounds.

² Carl Boggs, “Economic Conversion As a Radical Strategy: Where S and Labor *Building Bridges*.

2. Superfund for workers

Tony Mazzocchi was a leader of the Oil, Chemical, and Atomic Workers union (now merged with the Steelworkers). He was active in bringing trade unionists into the “ban the-bomb” peace movement. Since he represented atomic workers, he thought that disarmament might cost them their jobs. He was also a World War II vet who had gone to college on the GI bill. Putting a new twist on that highly successful program, in the 1970s he proposed that workers whose jobs might be threatened by disarmament should receive similar support.³

In the early 1990s, following the confirmation of fossil fuel-caused global warming, Mazzocchi revived the idea, calling it a “Superfund for workers” on the recently-established Superfund for toxic cleanup. The Superfund for workers would provide financial support and an opportunity for higher education for workers displaced by environmental protection policies. As Mazzocchi put it in 1993, “There is a price for dirt. There ought to be one, ‘Paying workers. He argued that transition from one kind of economy - from one kind of job - to another is not welfare.” Those who work with toxic materials on a daily basis in order to provide the world with the energy and the materials it needs “deserve a helping hand to make a new start in life.”⁴

According to Les Leopold, executive director of the Labor Institute and Mazzocchi’s close collaborator and later biographer, “Later environmentalists complained that word *superfund* had too many negative connotations, and the name of the plan was changed to Just Transition.”⁵ In 1995 speech, Leopold laid out the Superfund for workers/Just Transition proposal. “The basis for Just Transition is the simple principle of equity.” No toxic-related worker should be asked “to pay a disproportionate tax -- in the form of losing his or her job -- to achieve the goals” of environmental protection. Instead, “These costs should be fairly distributed across society.”⁶

In 1996, Les Leopold and OCAW president Bob Wages began “bringing representatives from organized labor together with representatives of frontline communities” “what a just transition would look like.” The result was both the formation of the Just

³ Les Leopold, *The Man Who Hated Work and Loved Labor* (White River Junction, VTP Chelsea Green, 2007) p. 415.

⁴ Tony Mazzocchi, “A Superfund for Workers,” *Edwards Journal*, 9(1).

⁵ Leopold, p. 417.

⁶ Jim Young, “Clean Workers,” *Sierra magazine*, July/August 2003. This article includes considerable additional information on the early history of just transition.

⁷ Christina Roessler, “Just Transition Alliance,” unpublished notes provided report March 212, 2016. Christina Roessler was at the time director of the French American Charitable Trust which provided funding for this effort. For current information on the Just Transition Alliance, see Just Transition Alliance <http://www.jtalliance.org/docs/aboutjta.html>

Transition Alliance in 1997. Wages was “personally involved” and “played an instrumental role” in the development of relationships with “leaders of justice movement.” Because he was so involved, “leaders of environmental organizations took the meetings seriously” and “put a lot of effort of relationships” and “a shared definition and agenda” for just transition. Wages continued to this day, after the OCAW merged with the United Paperworkers International Union in 1999.

The term “just transition” in the North American labor movement. By 1997, the Oil, Chemical, and Atomic Workers Union officially endorsed just transition, as did the Canadian Communications, Energy, and Paperworkers Union.⁸ In 2001, the Service Employees International Union, the largest union in the United States, issued an official energy policy that included a call for Just Transition.⁹

Meanwhile, just transition language and policy spread through the global labor movement.¹⁰ It was used in 1998 in a Canadian union newsletter; by 2000 it was appearing in publications of the International Confederation of Free Trade Unions (predecessor to today’s International Trade Union Confederation.) The ITUC represents 170 million workers in unions all over the world, campaigned for language embodying the just transition principle in the negotiating text of the Copenhagen climate agreement. It read:

An economic transition is needed that shifts global economic growth patterns towards a low emission economy based on more sustainable production and consumption, promoting sustainable lifestyles and climate-resilient development while ensuring a just transition of the workforce.

Similar language was included in the Preamble to the 2015 Paris climate agreement, though not in the body of the agreement itself.

The ITUC said a just transition can be achieved:

Through socially responsible and green investment, low-carbon development strategies, and by providing decent work and social protection for those whose livelihoods, incomes and employment are affected by the need to adapt to climate change and by the need to reduce emissions to levels that avert dangerous climate change.

⁸ Jim Young.

⁹ Jim Young.

¹⁰ Labor Network for Sustainability, “A Just Transition,” <http://www.labor4sustainability.org/post/a-just-transition/>

¹¹ Rosemberg, Anabella (2010). “Building a Just Transition: The linkages between climate change and employment” (PDF). *International Journal of Labour Research*.

While the ITUC recognized that just transition policies will be different in different countries and communities, it presented the basic elements as:

- Major public and private investment under long-term sustainable industrial policies to create green jobs and workplaces.
- Identification in advance of the employment effects of climate protection.
- Advance planning to compensate for adverse affects of climate protection.
- Social protections, including social insurance, income maintenance, job placement, and secure access to health, energy, water, and sanitation.
- Training and education for new careers for those affected.
- Wide consultation among stakeholders.
- A “diversification and change climate adaptation plan” for every region and community at risk to provide an alternative adaptation that “free will” only lead to suffering and opposition to climate measures.
- Protection for the economic life of communities, including new energy technologies and economic diversification.

The ITUC also pointed out that climate change is not “gender generally more vulnerable, representing the majority of the world’s powerless.” The 2004 Asian Tsunami, for example, killed four times as many women as men. Trade unionists believe that “climate justice cannot be achieved justice.”

The ITUC recognized that certain sectors, for example fossil fuel and energy-intensive industries, will be significantly impacted by carbon reduction. This includes such industries as steel, iron, aluminum, power generation, and road transportation. Protecting workers in such sectors requires investment in low carbon technologies and industries, energy efficiency, and retraining. Active labor market policies that redeploy workers from high-carbon to “green” jobs are essential to avoid bottlenecks in the new green economy.

The ITUC recognized that issues of economic justice go far beyond simply protecting those in existing jobs. Rather, it means making the transition to a green economy the means to create one that is fairer overall. “Trade unions propose that employment, income, wealth distribution, purchasing power, gender equity and measures to tackle poverty” should be placed “at the center of discussions.”

3. Environmentalists and just transition

The just transition concept and language was also taken up by sections of the environmental movement. According to Aaron Mair, Sierra Club President, just transition represents “a responsible call for a change in processes that are harmful” so that as we “transition to a cleaner way of manufacturing” the government ensures “a smooth transition that provides for workers.” Industry should also “bear the burden of economic liability for transitioning, not workers or the community.” There is “an implied social contract” that “industry is responsible to provide for communities and workers.”

Workers should not be bearing the burden of the environmental costs. Environmental justice communities are already paying with their health, and then they lose their jobs. Just transition ensures a humane and civilized approach. This happens in Europe, but not in the US. In the US, environmental justice communities are economically disposable. We need to emulate European standards. Just transition is an insurance policy for the capitalist system.

Dean Hubbard, Labor and Economic Justice Program Director of the Sierra Club, notes that the SC’s largest campaign is and Beyond Coal and gas initiatives that are part of its “Our Wild America” campaign in all “Just transition of those campaigns.”

According to Hubbard, there are two important parts of just transition. First, it provides an opportunity to “transform economy” create “high quality jobs, especially in low-income and communities. And it provides the opportunity to “take care of and protect fossil fuel workers and communities” by investing in them as we transition to clean energy.

If there aren’t more jobs created, if regions are left to will be disproportionately affected. It’s one of the many challenges of policies - the jobs our economy generates tend to be offshore, contingent, and privatized.

Mike Williams of the BlueGreen Alliance, the BGA, took “just transition seriously.” BGA’s core belief is that just transition is not “giving people money.” Just transition means, “there’s real help to people who lose their jobs along with an economic development plan.” Environmental groups in the BGA, including the Sierra Club, NRDC, National Wildlife Federation, and the Union of Concerned Scientists, advocate “support for workers losing their jobs.” Williams says that while BGA “supports expanding the clean energy economy,” the organization with labor and environmental organizations to deal with the practical implications of that transition—specifically “working with labor how to support impacted workers and communities.”

4. Just transition: Just a fancy funeral?

Both the term and the concept “just transition” have met strong workers, unions and the AFL-CIO. That resistance is deeply rooted in the experience of American workers and trade unionists. As Brad Markell of the AFL-CIO Industrial Union Council explained, “It’s very important to us that we build an experience working people have had for the feeling is that of years. People this transition happens in the current political economy, they’re going

Workers who have had well-paying jobs have seen big changes and the working class feels it’s gotten the short end of the stick. Holding seen as the only way to maintain a decent life for them and their families seen when their friends and family lose their jobs life is hard. Working people are afraid of change that involves job loss.

“There’s lots of resistance to the term just transition,” Markell says. To explain why, he quotes Cecil Roberts of the United Mine Workers: “I’ve never seen one. And he quotes AFL-CIO president Rich Trumka: “Just transition is just an invitation to a fancy funeral.” Markell notes that one-quarter of the coal industry has been put out of business, but “there’s been nothing for the coal workers are going through a transition,” but “they don’t feel it’s just.”

Markell notes that in the international arena people in organized labor use the term just transition.” The International Labor Organization’s guidebook on just transition. As part of the international labor movement, US labor has been asking for it in negotiations on the climate agreement. But domestically “the term is seen as a smokescreen.” He concludes that first, “We’ve got to make it real.”

The AFL-CIO’s approach to just transition is evolving. Although it has frequently pointed out the harm that workers and communities might face from climate protection policies, the AFL-CIO has never proposed a “just transition” plan to the Paris statement in response to the Paris climate agreement, however, it noted that “workers in certain sectors will bear the brunt of transitional job and income loss.” Recognizing reality, it endorsed the Paris agreement’s recognition of “the imperative transition of the workforce and the creation of decent work and investment in the affected communities and “creating supporting jobs like those that will be lost.”

This evolution is also occurring elsewhere in the labor movement. Barbara Byrd, Secretary-Treasurer of the Oregon AFL-CIO, notes that she first heard the term “just transition” at a climate conference in 2009. When she got back she started using it in Oregon and got push back from some labor unions: “They said not to use it because when their members hear it, it means you’re assuming they’ll lose their jobs. There is again discussion about using just transition language. The Steelworker’s Union in particular seems to recognize “they’ve got to find a way to talk about it if they want to influence conversations about climate change and clean energy.” From their perspective,

just transition should always be seen as a last resort; “They say we need to put a human face on the loss of jobs and wages and how that affects workers.” If there is going to be a transition to clean energy it needs to be gradual enough; take into account the special circumstances of workers being affected; and provide a Superfund for workers.

She adds that an additional challenge is the “head in the sand” issue -- the belief that some people in organized labor have that “transition to clean energy isn’t going to happen in the near future” or that “it’s way down” so the road don’t prioritize the issue.

5. Climate justice

The language of “just transition” was adopted and spread, but also the emergence of the climate justice movement that precipitated out of the mainstream climate protection movement as the 21st century began. International relations scholar Shannon Gibson, who studied the emergence of the climate justice movement firsthand, characterized the advocates of the climate justice frame as focused on the relation of climate change to economic and social justice. They advocated “systems” opposed to “traditional governmental ways of dealing with climate change.” These framing efforts as “justice” became “a global rallying cry, shifting criticisms away from technocratic claims that targeted policies, negotiators, and specific governments toward a more antisystemic approach” which criticized “development in poor countries,” “globalization,” and “neoliberal capitalism” in the context of climate change.

The climate justice frame drew on a “radical environmentalism” which “enduring power structures of sovereignty, capitalism, scientism, patriarchy, and modernity generate and perpetuate the environmental crisis while consolidating structural inequalities between the global North and South.” It drew on various frames,” including “indigenous cosmology, deep ecology, social ecology, ecology, environmental justice, ecofeminism, and eco-anarchism.”¹²

Michael Leon Guerrero, who was active in the emerging climate justice movement as National Coordinator of the Grassroots Global Justice Alliance, recalls “using just transition language” before the start of the discussions that led to the formation of the Climate Justice Alliance in 2010. He became exposed to the concept of Just Transition in the early 90’s as the Just Transition Alliance was formed by workers and frontline communities. He learned of the Million Climate Jobs Campaign for the first time at the UN COP in Durban, South Africa, in November, 2011, launched by thousands of workers from many countries and unions internationally. In this campaign he saw potential to connect the need for Just Transition to confronting the climate change crisis.

Gopal Dayaneni of Movement Generation says he learned about just transition both from the Just Transition Alliance and from people in organized labor. Movement Generation came to just transition from “an environmental justice frame.” It adopted and has been “actively propagating” the just transition frame. That is “part of

¹² Shannon M. Gibson, *Dynamics of Radicalization: The Rise of Radical Environmentalism against Climate Change*, dissertation, 2011. Gibson’s dissertation is focused on the organization Climate Justice Now! which functioned within the UNFCCC’s annual Council of Parties or (COP) sessions of gathering climate justice movement, see also Jeremy Brecher, *Climate Insurgency* (New York: Routledge, 2016) p. 30-35. “Antisystemic movements” have been defined as “political groupings that oppose and resist the prevailing productive forces and relations in a given historical era.”

how it's moved out," in Movement Generation helped found the national network Climate Justice Alliance, which has been "redefining what just transition means" and are "innovators in just transition work." Ajamu Dillahunt says Black Workers for Justice were introduced to just transition through the Grassroots Global Justice Alliance, which is a member of the Climate Justice Alliance (CJA). Aiden Graham of the North Carolina League of Conservation Voters says, "I first came to the language through Movement Generation."

Miya Yoshitani of the Asian Pacific Environmental Network describes how the just transition framework and language were transformed in the climate justice context in the years after 2010.

As one of the community-based environmental justice groups engaged in the Just Transition Alliance in the 1990's, APEN brought together part of a refinery workers with OCAW and "fenceline" community members, some of the inherent tension, explore common ground, and talk about what a just transition for workers and impacted communities could like. This early work to bring together labor and community voices was the foundation approach to just transition.

Years later, as a member of the Grassroots Global Justice Alliance, APEN joined other GGJ groups in a "climate justice alignment process" to talk about term vision, from the perspective of "frontline" communities, for This set of groups, including the Indigenous Environmental Network, Black Mesa Water Coalition, Communities for a Better Environment, Jobs with Justice, POWER, East Michigan Environmental Action Council, Kentuckians for the Commonwealth, APEN and several others, were part of the GGJ Global Wellbeing Committee, and after several years of being engaged in grassroots delegations to United Nations Climate Change Conference of Parties, or COP, meetings felt that they needed a more clearly articulated and commonly held vision for climate justice to be more effective and aligned in their organizing response to climate change here in the United States.

Most of these organizations, like APEN, had decades of experience organizing frontline communities around environmental justice issues at the intersection of race, poverty and pollution and saw the threat of climate change as a terrible yet logical extension of the same root causes of the extractive economy. They were able to draw on these similarities in the local organizing fights against many of the same multinational corporations and developers, as well as the overlap in the transformational solutions that these same communities had been campaigning for over many years.

Alongside the frontline organizations there were a handful of "support organizations" like the International Policy Institute, the Movement Center, the Center for Story Based Strategy, and Movement Generation, who were playing a supportive role in the alignment process and helping this set of

organizations with the visionary framework for climate justice that ultimately came to be called the “Just Transition Framework”.

At first these groups just tried to get aligned on the language and concepts. It was a very iterative process. The question was: how to transition away from dirty and extractive industry to something better? Work and jobs need to be created on a massive scale and they need to build wealth locally and keep it there. This understanding led to a more complex sense of direction. They wanted to come up with what a long-term alternative could really look like, on the ground, and as a movement. Trying to answer those questions took them to the new just transition frame. So just transition became a more holistic approach encompassing both the need to end the extractive economy and a vision for healthy, thriving, and connected local economies in its place – a view that included, like the original just transition definition did, the needs of workers and impacted communities in the transition. It moved them from a reactive approach to one that is both reactive and visionary.

As the term has become more widely used there has been some tension over the use of the just transition term and framework and how the origins of the framework are acknowledged and understood. Ultimately, the feeling is that we have to address the impacts of climate change equitably, for frontline communities and frontline workers and that it’s going to be a strategic intersectional process to arrive at a positive result. And that the process is just as important as the outcome.

Burt Lauderdale, executive director of Kentuckians for The Commonwealth, explained the origins of the Appalachian Transition Initiative (ATI). Started in 2010, ATI was a joint initiative to promote “a public conversation about the need and opportunity for a just economic transition in Appalachia.” Within KFTC, it was a joint effort between the Energy, Transition, and the Canary Project. ATI “had a big discussion about the language to use” and made “a deliberate choice to use just transition language because that was what they meant.” They were talking about “changing from the old power economy to a new economy.” There is a wide spectrum within KFTC of how different staff members are using the just transition language and frame. “It’s constantly evolving.”

Aiden Graham and Justine Oller of the North Carolina League of Conservation Voters (interviewed jointly) say their explicit work related to just transition began in 2015 “working to develop for a just transition to a clean energy economy in North Carolina.” PowerUp NC, the field development arm of NCLV, draws on the conceptual framework developed by the Movement Generation. PowerUp NC’s understanding of just transition is that the climate crisis is a symptom of intersecting crises in environmental, economic, and political systems.” The only solution is “systemic shift.” There is an opportunity to do that “in a way that transforms the economy as a whole.” Nothing else is “a Band-Aid fix.”

They started their program to look at root causes of problems and to bring justice and environmental work together, to talk about general quality of life, and to build something new.” Just transition is now a guiding principle that drives all of their work. They are looking at housing and gentrification; linking housing justice to utility justice; creating green jobs through economic development plans; and developing a community-driven plan for a green careers pipeline.

According to Aaron Bartley of PUSH Buffalo, the organization was introduced to just transition language by a local ally that was working on a coal plant shutdown campaign. PUSH started using just transition language 2½ years ago. PUSH considers itself to be “in the middle of the adoption process in terms of the use of JT language and concepts.” They moved the use of the language out through trainings they did. While the language is not used universally, it has “Once people know what it means, they use it.”

Part II: Analysis

6. Using the language of just transition

As just transition language has filtered into different contexts over time, its use and meanings have changed and diverged. Different groups have used it to mean different things, and, as part of the same process, they have used it to address different constituencies for different purposes. In reviewing the interviews conducted for this report, it is apparent that denotation, connotation, use, and constituency are frequently intermingled. For that reason, this section does not aim to classify different denotations – literal meanings -- for the term, but rather to show ways that various interviewees are using it.

Brad Markell of the AFL-CIO, despite his reservations about the term, emphasizes the resonance of just transition language in the international labor movement. “The beautiful thing about the language of just transition though is that it really works nationally and internationally to talk about vulnerable workers in communities. Whether Bangladesh or here folks get what it could mean.”

Mike Williams of the BlueGreen Alliance says there is a wide spectrum of how different staff members are using the just transition language and frame. The forces driving a shift to clean energy—including natural gas prices and cost competitive renewable energy—mean that the projects BGA is working on where they are using just transition concepts are all related to coal. In southwestern Pennsylvania “we held stakeholder discussions and meetings to assess the impact of power plants and how to find creative solutions to transition through the implementation of the Clean Power Plan.” BGA organizers are also currently working in Michigan, and Minnesota, and have worked in Missouri and Montana. In all of these places policies that create quality clean energy jobs and transition for impacted workers and communities are part of the discussion around the Clean Power Plan. The practical implementation of solutions to climate change cannot be separated from the conversation on jobs and the economy. Solutions need to focus on “providing assistance through federal, state or local revenues.”

It’s no easy task to talk about transition with the workers and communities. However, as the nation transitions to clean energy, it is critical to have these conversations and to be proactive about policies and investments that can help bridge that gap. BGA worked with people on the ground in Colstrip, MT, where many are concerned that a power plant and mine are at risk of being shut down. It is one of only a few unionized mines west of the Mississippi where workers have been in the discussion about the impacts of this shift to clean energy and how to be on the forefront of that issue.” However, “this is a hard taste in their mouth because “to them transition means they’re losing their jobs.” But we have to work to both create quality clean energy jobs, assistance, and economic development support for impacted workers and communities.

For Joe Uehlein of the Labor Network for Sustainability, “the meaning of just transition is very holistic, and very much focused on what’s happening with The concepts of just transition are embedded in all the the absence a real just transition approach for workers has been “holding back” “preventing them from participating in discussions about climate change.” people it won’t work if the talk in utopian terms just “that transition just is not real to them.” Organized labor is grounded in thinking about grievances,” so whatever the discussion When we say that for LNS, the meaning of Just Transition is very holistic, we mean that “we believe it is possible to work for the great leap forward, a transition away from capitalism and toward local democratic economies, while at the same time fighting for what working people need today.”

Movement Generation Dayaneni notes that, “Some people are concerned that the way MG uses just transition is way too radical because it’s also about resisting capitalism.” Other people are concerned because “just transition language doesn’t speak to everyone.” Dayaneni’s own discomfort is that “just transition doesn’t explicitly speak to the nature of the disruption” that it will take “to get us where we need to go.” The word “transition” makes it sound like “a smooth, almost easy process.”

Dayaneni says that in towns of folks on the ground, where people are exposed to just transition language, like in Richmond, California, and Eastern Kentucky, it seems to be working.” When it is contextualized for people it works: “people will embrace the frame if it’s meaningful.” The other place just transition doesn’t have much traction is within organized labor. “It’s gotten a reputation of being about transitioning jobs that don’t exist.” But when MG presents its vision of just transition to workers and organizers in organized labor, “folks get excited.”

He says it’s a question of “what does it mean to transition whole communities and whole economies?” Movement Generation wants to “get workers to redefine industries themselves.” Just transition has little traction now because “it’s a way of talking about system change that’s visionary.” and it promotes a shift, “mind shift, and repurposing of economy.”

There was a “long-term bubbling” within Kentuckians. For The Commonwealth,” according to Lauderdale around just transition language and thinking. It was “a very organic evolution” for their political theory. KFTC pivoted from primarily “resistance” to “what do we want to see?” When they started using transition language, “people understood that meant change.” They got resistance to the language, “so they knew they were on the right track.”

The KFTC just transition theory is “visionary and aspirational.” It doesn’t mean compensation or buy-out. Just giving people money isn’t necessarily a goal the communities it works in. The just transition language and frame needs to be “visionary, unifying, place-based, and gender-inclusive.” Lauderdale is concerned that way that “t

a lot of people are using just transition language now” is to mean “compensation -- without any of the political meaning left.” They get “locked into transition as an income concept” before they “know about or understand the broader historical meaning of just transition.”

Miya Yoshitani of the Asian Pacific Environmental Network notes that, “APEN is not stuck on the language, but is really interested in the concepts.” They don’t just use transition language with all of their members, but “the concepts really resonate with their members.” It is the first time “so many have been across sectors for a concept like this.” APEN is excited that National People’s Action and Center for Community Change NPA and CCC are getting on board.

A rather different experience is reported by Matt Ryan of ALIGN. He says he doesn’t hear just transition language used often even in the environmental justice community in New York City. He says it’s more of “an equity frame.” He says ALIGN uses just transition language somewhat, “but it’s been a bit of a misnomer.” ALIGN is struggling with strategic communications because “just transition isn’t resonating enough with their constituencies that it doesn’t work with a lot of the not used in an on-going organizing effort “it’s a trigger that’s associated with closings, risk, environmental concerns generally trumping empathy and support for workers.” ALIGN needs something that communicates a vision and idea. It is not clear in New York City what the transition is.

According to Ryan, just transition language works best with climate resiliency transition work. On the resiliency side the question is, “communities going to need to adjust?” The just transition framework is more about “creating a decentralized energy grid” and “how to close the gap of pre-existing inequities and to create jobs.” Just transition has to factor in residential displacement: “That’s the Trojan Horse for moving people out and redevelopment in NYC.” The problem for people is “how to live in NYC and afford a place that is safe and sustainable.”

Ajamu Dillahunt reports that just transition language is new to Black Workers for Justice (BWFJ). “I didn’t use it now it is used a lot but it is a concept that’s easy to grasp.” It includes environmental racism.” It is about “what are the social and political forces that lead to racism and climate change?”

Just transition fits into things BWFJ has been working on for years. For example, it is bringing new thinking to the discussion about jobs. Dillahunt uses just transition language to ask, “what happens to jobs” if we make change “as fast as we need to in order to address climate change?” The conversation is “talking about jobs and the people who are going to lose them.” We also need to consider and talk about “the people who haven’t had access to jobs to begin with.”

The just transition frame stimulates a range of vigorous conversations. It raises the question of change in the way the economy and the markets are structured.” It is “a question of democracy.” It raises questions about the cost of energy: “energy bills are

super high for poor people.” And it brings in discussion of “coop models and other new ways of thinking about and organizing economic life.”

I can't think of better language oriented towards solutions. We need a transition in the economy and in politics. Labor isn't dealing with this the moment. They're more focused on contracts and membership issues. These things are important but can't be separated from the challenges of climate change.

Like Matt Ryan, Jordan Estevao of National People's Action points out that the just transition “means different things to different people,” and that “depends on the situation.” NPA doesn't “narrowly focus on workers and jobs for displaced workers.” It is about “how to move from an extraction economy to one that's about creation and life.” Just transition “speaks to the need to move away from our current system to another system.” The phrase has been very helpful in that “it implies that when we are against something (fossil fuel extraction, concentrated pollution, greenhouse gases, etc.) we are also in favor of alternatives.”

NPA is trying to engage folks who are more often using that language like the new economy or justice or energy democracy. “The ideas are important, but not the specific language.” NPA hasn't really transitioned language. They are not intentionally using it externally, but they are using it internally with NPA staff. “There hasn't been a deep discussion about the value and usage of just transition language,” but “we do have lots of conversations about the structure to attain just transition in its broad sense.”

Jonathan Rosenthal of the New Economy Coalition says a term that transition is comes up that often.” In the vocabulary of folks in NEC, but not in daily use. “Capitalism is used more often.” There's not a clear definition of transition: “I fuzzy, so it is not as useful.” Just transition is “a broad term that means different things to different people. We are also struggling with ‘new economy’ as that concept as well. Our metanarrative project is building a framework to support a more useful set of narratives, built on the work of our growing network, that will give people a tangible and dynamic way to understand that another way is possible.”

NEC leans towards smaller, more tangible projects like community finance and worker cooperatives, as well as more scalable projects such as divest/reinvest efforts. A transition conversation is less common than their conversation is “more about the new economy.” The just transition conversation is coming up more in work, which requires a discussion about transition. Rosenthal says he brings it up a lot and tries to talk about transition strategies. “NEC is about connecting transition concepts are useful.” He feels that a just transition concept is important for NEC and “they need to breathe more life into their use of the old economy to the rapidly expanding new economy requires

Aaron Bartley of PUSH Buffalo finds just transition language very useful. It is great “a way to address issues related to climate change especially as they relate to the disproportionate impacts to low-income communities and communities of color.” He likes just transition because “it blends climate justice with economic and racial justice.” It goes beyond just a “green” frame. PUSH is “very high on the green jobs frame for economic equity for underserved populations: It’s working for it makes climate work “more tangible and real.” PUSH sees the work “not just about the future of the planet — it’s also about the just transition concept.” The just transition concept “creates the bridge they need.” Bartley says he doesn’t normally like changing frames and language when something has been established, “but when they were introduced to just transition, it resonated.”

While the sometimes vague and shifting meanings of just transition may at times present problems, their diversity may not be exclusively a liability. Terms with vague and shifting meanings can play a constructive role at certain points in political discourse. The slogan “Another world is possible!” shed little light on what a world might be, but at a particular point in time it powerfully expressed and unified a rejection of the Thatcherite view that “there is no alternative” to neoliberalism. Whatever its denotation, “just transition” for many people the idea of a shift to a significantly different and more just society. That does not imply that such vague language can substitute in the long run for a more concrete specification of what such a society might be or how it could be attained.

Such a use diverges from the more narrow and specific use of just transition to signify a program to protect workers whose jobs are threatened by the transition to a climate-safe economy. This use is often accompanied by policy proposals along the lines of a Superfund for workers. And it is often encapsulated in the slogan “Left Behind!” Whatever the fate of the term “just transition,” it is clear that both the narrower definitions refer to important ideas; that both require distinct terminology to clearly refer to them; and that in the context of a wider program for change the two may not be contradictory.

7. Unifying vs. divisive effects

Many of the interviews provide information and comment on ways that just transition language serves to draw together or divide different movements and constituencies.

Just transition can continue to divide its advocates from workers who experience it as a threat. Aiden Graham and Justine Oller of the North Carolina League of Conservation Voters recounted how they'd originally a ~~Just Transition Roundtable~~ and a related Just Transition plan for NC through their work with the Labor Network for Sustainability. They wanted organized labor at the table involved in the discussions, but they weren't aware of the history in relation to organized labor. In labor ~~terms~~, "transition" means a path or plan for those workers transformations in the economy. In relation to climate change for example that could mean electrical workers displaced from jobs in coal plants. Labor unions, such as the IBEW, tasked with representing their current members who work in both the fossil fuel and the clean energy sector occupy a tricky position.

It became clear at an early meeting that the language of Just Transition would set some participants from organized labor on edge and compromise the ability of one of our key partners at the state federation from playing an explicit role. At the meeting it looked for a moment like it might be a make or break issue. Joe Uehlein suggested shifting the language and calling the project a Climate and Jobs Roundtable instead. Everyone involved agreed that for the time being that made sense. Internally however "Just Transition" has continued as a guiding principle.

Another example was in Graham's first meeting with the IBEW. They a representative had "a great conversation" because, although the union officially opposes Power Plan and similar regulations of carbon ~~discussions~~, he "led v green energy and the potential for job creation." We found common ground, particularly in talking about the explosive growth of the solar industry in North Carolina. We even touched on "the need to fight for retirement packages workers from closing plants, but only talking after job creation." the ice concludes, "There seems to be a lot of potential for good talks with labor attached to leading with the term just transition."

Just transition should also address issues that divide industrial workers from low-income community residents. Brad Markell notes that in places like Richmond, CA, "community folks don't work at the adversely affected by pollutants." Conversely, workers in the plants mostly don't even live in "so there's community tension around cutting pollution if it could mean jobs at risk."

Joe Uehlein points out that there are a couple of "Achilles heels" together environmentalists and labor around climate change. Environmentalists have never been able to understand "the primacy of work in people's lives" is "tone to the needs and aspirations of working people. Labor unions have never found a way and adjustment changes in the "As the American

economy has changed and grown away from us, we tend to circle the wagons and protect what we have,” even as that slice shrinks and the rest of the economy grows. We are “always playing catch up” because our inability to adjust to changes on the economy has us “behind the eight ball.”

Despite such divisions, a number of interviewees noted that the just transition language and concept can also play a role in bringing different groups together. Miya Yoshitani of the Asian Pacific Environmental Network observed, “the strength of the just transition framework is that it allows for a more conceptual alignment around the approaches.” It is “very helpful in alliances and movement relationships.” Burt Lauderdale of Kentuckians For The Commonwealth says that KFTC’s approach with allies “has been to repeating just transition,” and also to “let groups make the language and frame their own.” As they resolve “always mean.” the Nontheless, it’s moving forward in the same direction.”

Aaron Bartley of PUSH Buffalo says just transition is important in part because “it has the potential to help build a bridge between urban and rural issues and constituencies.” Just transition is “a term that’s initially crystal clear.” and that rally needs to be explained. It creates “both a bridge and an umbrella in terms of thought systems.” Just transition helps people “understand systems.” It is at the nexus of inequality and climate. It’s what we need. Just transition is at that nexus if it’s useful. Terminology

Just transition is also “shared terminology.” PUSH works on the state level in close alliance with over 60 groups that represent environmental justice, labor, social justice organizations and environmental advocates (NY State Energy Democracy Alliance and NY Renews) on energy efficiency and renewable targets particularly in relationship with low-income constituencies. “Just transition language is used by these allies in a range of ways, and it’s gaining currency.” PUSH also uses just transition language with “policy types” and with “legislative and labor communities.” PUSH uses it in Albany (New York state capitol) as part of its frame. In addition it has been “moving the language out in a regional alliance -- the Crossroads Collective -- especially in trainings in the last three months.”

Barbara Byrd of the Oregon AFL-CIO is working with the Coalition for Communities of Color in Oregon, for whom “just transition means something different.”

They want to take advantage of the opportunity to make sure money available for clean energy transition is used in a way that also cleans up impacted communities and generates jobs for people in those communities. They want to be involved in just transition in order to change and build a new economy and create jobs.

She feels the goals of communities of color and organized labor are compatible. Indeed, when she talks with folks in low-income communities she often finds “more in common

with them and the way they see just transition than in discussions with environmentalists.”

Brendan Smith of GreenWave says, “You can’t have a just transition for coal miners, or that just cares about poor people of color in Detroit—you have to address work for both.” You have to do that “for both political and economic side,” “you’re never going to build a new economy unless all of these constituencies” “you need enough power to make the power comes from diversity.” You need “both racial and economic justice.” The Keystone XL conflict shows how such an issue can play out badly. There “the environmentalists and community groups were fighting with workers who wanted jobs. We need to be “providing opportunity for workers in general and one set of workers to another.” “The beautiful thing about just transition allows us to get the morality, politics, and economics right.”

8. Policies

Different concepts of just transition entail rather different kinds of policy proposals. Starting with the original Superfund for Workers proposal, advocates for protecting workers and their communities from adverse impacts of climate policies have devised a string of proposals, including programs based on the GI Bill of Rights and economic development funds and programs.¹³

Some of these proposals have recently been embodied in the “Clean Energy Worker Just Transition Act” proposed by Sen. Bernie Sanders (I-Vt.), Jeff Merkley (D-Ore.), Edward Markey (D-Mass.)¹⁴ The bill initially targets coal workers, but over time expands to other energy sector workers as well. It provides unemployment insurance, health care, and pensions for up to three years and job training and living expenses up to four years. Employers receive tax incentives to hire transitioning employees. Counties where 35 or more workers become eligible for the program can receive targeted development funds. The right of workers to join unions is protected by streamlining NLRB union recognition provisions. The bill covers the estimated \$41 billion cost of the program by closing the tax loophole that allows corporations to send their headquarters overseas to avoid paying taxes.

Just transition proposals have also been incorporated in a number of studies oriented toward broader issues of jobs and climate protection. The recent LNS study “Employment After Coal: Creating New Jobs”¹⁵ prepared by Frank Ackerman of Synapse Energy Economics lays out a plan to replace half of the current jobs of Eastern Kentucky coal miners while reducing the region’s the national average. The plan is based on expanding six economic sectors: energy efficiency, local food production, health care, sustainable forestry and wood products, tourism, and environmental remediation.

Joe Uehlein of the Labor Network for Sustainability says a just transition could “look like an expanded GI Bill of Rights. They would get health care and other benefits like pensions, education of their choice, training, and perhaps a guaranteed annual income for four or five years. There would have to be block grants for economic development and other assistance for communities.

Uehlein says that to really provide workers with a just transition would require a national program like building the national highway system, going to the moon, or winning World

¹³ For an overview of such proposals, see Jeremy Brecher, “A Superfund for Workers: How to Promote a Just Transition and Break Out of the Jobs Dilemma,” *Dollars & Sense*, November/December, 2015.

¹⁴ <http://www.sanders.senate.gov/download/worker-just-transition-act-summary?inline=file>

¹⁵ <http://climatejobs.labor4sustainability.org/eastern-kentucky-report/>

War II.¹⁶ “It needs to be big, and it needs to be a federal program.” There should be a “surcharge on pollution” “we have the money, it’s a question of choose to spend it.”

The LNS report “Jobs Beyond Coal: A Manual for Communities, Environmentalists”¹⁷ recounts a variety of examples in which unions, community groups, environmentalists, and government cooperated to provide a transition for workers affected by the closing of coal-fired power plants. Based on these experiences, it recommends “key protections for workers and their communities” that coal-retirement campaigns can demand from coal power plant employers and public officials and agencies who negotiate with them:

- Negotiate a jobs agreement with unions representing affected workers.
- Find jobs for affected workers who want them.
- Ensure job retraining for those who need it to fill new jobs.
- Provide decent pensions with healthcare for workers who are not provided other jobs and who do not opt for retraining.
- Create jobs restoring the site.
- Reutilize facilities to replace losses in tax base.
- Fund job-creating community economic development.

Protections should apply to all affected workers, including those in supply and transportation.

Brad Markell of the AFL-CIO emphasizes that, “for just transition to be real it has to be about more than simply training.” “Training doesn’t create jobs” “jobs create training” “parking lot attendant with a PhD is still a parking lot attendant” “out there they would be filled. When people talk to workers who are being paid decent wages and talk about transition strategies where jobs pay \$10-12/hour, “that doesn’t work.”

Public policy has to be about “driving investment to places where jobs are lost” “making sure that “jobs are created that are good, family supporting jobs” “there are that “precursors to economic development.” There have to be “good transportation systems, schools, health care” and “it all has to be adequately funded.” Training programs should emulate those of the building trades a building trades apprenticeship they’re trained for a career, not just a specific job.

Markell also cautions, when working with workers “you can lay out general notions, but you can’t be too” “The prescription is “deep consultation with folks on the

¹⁶ For a climate transition strategy drawing on World War II as a model, see Jeremy Brecher, Ron Blackwell, and Joe Uehlein, “If Not Now, When: A Call to Action to Address Climate Change” *Labor Forum*, 2014.

http://www.labor4sustainability.org/wp-content/uploads/2014/09/NLF541793_REV1.pdf

¹⁷ <http://report.labor4sustainability.org>

ground” including “labor unions and experts on local and regional economics.” A big element is “worker voice.” True justice can only be socially constructed.”

Barbara Byrd of the Oregon AFL-CIO sees California’s AB 32 cap-and-trade law as a good model because “it sets money aside for affected communities and workers,” and there’s an implementation committee “that includes residents and workers.” She’s hopeful Oregon can pass a similar bill in its next

She thinks this model is “the place to start.” She’s a simplification that has been introduced in Oregon that she thinks has “all the right stuff” in it.

Dean Hubbard says the Sierra Club has developed four principles of economic justice. They are that energy economy should provide good careers” communities and workers dependent on fossil fuels for their livelihoods need to be protected” “low income and communities of color should get their fair share of benefits of a clean energy economy” “energy needs to be affordable.” He would add a fifth principle: “democratic accountability.” The Sierra Club is in the process of developing metrics for these principles.

Brendan Smith of GreenWave notes that the GreenWave model “requires” For example, it is necessary to help “secure energy costs” ocean acres GreenWave worked on legislation called the Seaweed Jobs Bill that rate for ocean farming in our area to \$25/acre.” To get the way to generate hundreds of jobs,” which “resonated with policy

For those advocating deeper structural change, the formulation of immediate policy objectives can be problematic, and there are few examples in the interviews conducted for this study. There are some, however. Gopal Dayaneni of Movement Generation argues that non-extractive finance through “local non-extractive revolving-loan funds are important” because wealth generated in a community stays in the community” and creates a *commons of capital*.” And he proposes a “*proposition tax*” that “devolves resources and power to the local level for energy and climate action plans.” We could also be fighting for an “Energy and Climate Action Planning Block within existing campaigns for a Financial Transaction Tax, which would also devolve resources into communities. Other policy mechanisms include Community Choice Energy (Community Choice Aggregation), which are only effective if they are accompanied by a robust Energy Democracy plan “for how we will provide is “designed to improve conditions for workers.”

9. Just transition in practice

Efforts to put just transition principles into practice have so far been limited. The interviews conducted for this study provide only a few examples. Some of these examples involve policies; others involve experiments at small-scale implementation. Some are explicitly identified as just transition initiatives; others are not, but clearly embody just transition principles. Here are a few examples from the interviews, supplemented by a few from other sources.

According to Mike Williams, in 2011 the BlueGreen Alliance started pushing the White House on clean energy and a transition strategy. The Power+Plan, incorporated in the Obama administration's fiscal year 2016 budget, was the result of just transition work by a large number of organizations. According to Dean Hubbard, "putting pressure on the Administration paid off with the Power+ Plan." The plan is good in part because it includes "lots of stakeholders, including unions, with an economic development approach." The plan represents a significant breakthrough in recognizing the need for a "just transition" for workers affected by the transition away from fossil fuels to cleaner sources of energy.

The Plan has three core worker and community protection elements: The first, the so-called "Power" plan, provided more than \$55 million in FY 16 and will provide more than \$66 million in 2017 from a number of different federal agencies for job training, job creation, economic diversification, and other programs for communities that have experienced layoffs and economic hardship due to the declining coal industry. The second element uses \$1 billion in Abandoned Mine Lands funds over 5 years to invest in economic diversification and development programs, and clean-up projects at hazardous abandoned mines that boost employment and business opportunities. This element of the Power+ proposal is reflected in the bipartisan RECLAIM Act introduced in 2016 by Rep. Hal Rogers (R KY). The third element would shore up the health and pension benefits provided to United Mineworker retirees, which are threatened by widespread bankruptcies in the coal industry.

Power+ has been greeted enthusiastically by Appalachian social justice groups like the Mountain Association for Community Economic Development and Kentuckians For The Commonwealth. While not nearly sufficient in terms of the scale of investment, this proposal for the first time puts a just transition for workers in fossil fuel-related industries on the national political agenda.

Bridgeport community support When the Healthy Connecticut Alliance, which includes community, environmental, and environmental justice organizations, campaigned to close the Bridgeport Station coal-fired power plant, they included in their demands a series of protections for those who worked in the plant:

- Negotiate a jobs agreement with affected workers.
- Offer jobs for affected workers who want them.
- Ensure job retraining for those who need it

- Provide decent pensions with workers health care not provided other jobs and who do not opt for retraining.
- Create jobs restoring the
- Reutilize facilities to replace losses in the

PUSH Buffalo: According to Aaron Bartley, “PUSH has done a lot of the practical application of what just transition would look like, as well as how to build power to achieve it.” PUSH thinks about all the work they do at transition work. “They consider all their micro and macro victories transition.” They are building “super sustainable houses”. “That’s a just victory.” They are winning and working to develop community based solutions in the renewable energy and energy efficiency sectors, including a new community net-metering policy for New York State that will enable low-income communities to cooperatively own and manage clean energy assets. “That’s a just transition victory.” PUSH is fighting for a 40% set-aside of public clean energy investments for disadvantaged communities and enforceable labor standards that mandate a living wage for disadvantaged workers.

Black Mesa Just Transition Initiative: Since it started in 2005, the Black Mesa Just Transition Initiative has served as a model for how communities dealing with extreme energy can fight to shut down polluting facilities and put in place clean, community controlled sources of energy and green economy jobs that build off of the strengths of the local people, culture, and land.¹⁸ The Black Mesa Water Coalition pursues just transition through three goals:

- to hold Peabody Coal Company accountable for the damage done to Black Mesa’s water, environment, and community health;
- to permanently close the coal mines on Black Mesa; and
- to replace the coal-fired power plants fed by the Black Mesa mines with renewable energy.

The Black Mesa Solar Project is a holistic approach to energy development that involves community participation and benefits, job training, and environmental impact. The long-term vision of the project is to establish a solar manufacturing facility and a series of 20MW to 200MW solar photovoltaic installations on the abandoned mine land of Black Mesa.

The Project aims to develop long-term, sustainable, locally based “green” economies place value not only on profits, but also on the protection and preservation of lands, waters, air, culture and future generations. It features three pilot projects that exemplify an appropriate development path that honors the sacred ecological relationships and incorporates traditional practices into economic development.

¹⁸ This account is based on a description from Our Power Campaign <http://www.ourpowercampaign.org/org/bmwc/>

- The Navajo Wool Market Project is aimed at building local Navajo capacity to improve the quality of wool production and to elevate access to a fair market value for Navajo wool producers.
- The Food Security Project works with seven communities working towards revitalizing, strengthening, and supporting the local food systems of the Black Mesa region.
- The Climate Justice Solutions Project has two key goals: to educate the communities of Black Mesa about climate change and engage them in creating local solutions to this global issue. These local solutions can reflect both adaptation strategies, such as restoring regional watersheds, or mitigation strategies, such as transitioning from coal to solar energy development on Black Mesa.

Chicago New Era Cooperative in December 2008, Republic Windows and Doors in Chicago shut down and laid off 250 workers. Then the workers, with support from the United Electrical Workers union, did something that has happened rarely if ever in recent years: They occupied their factory and refused to leave. Amidst worldwide publicity, they not only won their immediate demands for vacation and severance pay; the union helped find a buyer who promised to reopen the plant with the existing workforce.

In 2012, the new owners threatened to close the plant. The workers held another occupation, organized a co-op, and reopened the plant under their own control. The workers renamed their company New Era, “as we hope future jobs can be created in America.” They maintain that, “Even building the new economy we all want, and no one should be treated as temporary or just raw material for someone else’s business.”¹⁹

The New Era cooperative was established with support from the United Electrical Workers Union, the Center for Workplace Democracy, and Occupy Chicago (the local equivalent of Occupy Wall Street). It has received financing from The Working World, a loan fund that has financed dozens of worker-controlled factories in Latin America. New Era’s 23 workers produced half-a-million dollars’ worth of energy-efficient windows and doors in 2014, and the business has been growing rapidly since. The workers hope to spawn other cooperatives, for example by encouraging drivers to form a coop to provide delivery services for the company.

Eastern Kentucky Clean Energy Collaborative: A significant portion of electricity in eastern Kentucky is provided by the East Kentucky Power Cooperative (EKPC), a rural electric co-op made up of sixteen distribution co-ops and serving eighty-seven counties.²⁰ In 2005 the Kentucky Public Service Commission approved an EKPC proposal to build the Smith coal plant in Clark County.²¹ On October 29, 2009, a public interest coalition

¹⁹ New Era Windows Cooperative, <http://newerawindows.com/about-us/our-story>

²⁰ Sara Pennington and Randy Cooper, *Wisconsin Approach to Renewing East Kentucky*, *Solutions* (July 2010).

²¹ Sierra Club, *East Kentucky Power Cooperative Agrees to Halt Plans for Smith Coal Plants*, November 18, 2010.

of individuals and organizations filed a formal complaint with the Kentucky Public Service Commission asking that the approval be revoked. They argued that changes in demand for energy and the development of renewable alternatives made the plant unnecessary. The coalition included Kentuckians for The Commonwealth (KFTC), the Sierra Club, and the Kentucky Environmental Foundation.²²

The coalition knew that the issue of jobs and economic impacts would be crucial in impoverished eastern Kentucky. They therefore commissioned a study by the Ochs Center for Metropolitan Studies showing that far more jobs would be created and electric rates would be lower if EKPC invested instead in energy efficiency, weatherization, hydropower, and wind power.

KFTC, a group with chapters in communities throughout Kentucky, issued educational materials specifically directed to the impact of energy decisions on workers and their jobs. They held community meetings around the Ochs Center report. Community leaders attended air and water permit hearings. They met with EKPC board members to encourage them to support the alternative to the Smith plant. In June 2010 the Kentucky Public Service Commission started an investigation of the need for the Smith plant and ordered the EKPC to provide extensive information regarding the plant.²³ That set the stage for negotiations among the parties. On November 18, 2010, EKPC reached an agreement with the public interest coalition. EKPC agreed to immediately halt plans to build the Smith plant and to stop seeking permits to proceed with construction.

Even more remarkably, it committed \$125,000 toward a collaborative effort in which EKPC and its member co-ops would work together with public interest groups to evaluate and recommend new energy-efficiency programs and renewable-energy options in Kentucky. The Clean Energy Collaborative is now meeting for quarterly roundtables. It involves a wide range of partners, including the EKPC and its member co-ops, the public interest coalition members, and housing and economic development groups.

GreenWave, initiated by commercial fisherman Bren Smith, is a project that aims to embody just transition principles in a new approach to ocean farming. Over the past seven years, Smith has used his Thimble Island Oyster Farm in Long Island Sound to develop a new model: a vertical, “3D” ocean farm, which produces and shellfish for food, fuel, fertilizer, and feed. Smith’s model, which he calls “climate farming,” seeks to rearrange the “moving food plates” of ocean plants to the center of the dish and wild fish to the edges.” It represents “an engine of climate mitigation” with his seaweeds “soaking up five times more carbon than land-based plants” and “requiring zero inputs” – making it “the most sustainable form of food production on the planet.” GreenWave now aims to use this model to create “a future where 3D ocean farms dot our coastlines in ‘reefs,’ clustered around

which produces
calls “climate

²² Jeff Biggers, “Kentucky Cancels Coal Plant, New Power Movement Electrifies Grassroots Alliance,” *Grist*, November 18, 2010.

²³ Sierra Club, “East Kentucky Power Cooperative Agrees”

Conclusion

In late April 2016 the Labor Network for Sustainability and the Grassroots Policy Project convened a meeting in Washington DC to discuss a preliminary draft of this report. The participants included most of the report's interviewees.

What do you get when you bring together leaders and activists from labor, community organizations, environmental organizations and others to hammer out a common vision of Just Transition? A profoundly rich and deeply informative conversation, and realization that heretofore bones of contention can become elements of common vision.

Relationships bring understanding, and understanding fosters respect, which can lead to a common vision. When we are together, we naturally rise up out of our silos and see that our way is only one element of THE way. When protected by our silos we tend to think our way is THE way.

Labor folks tend to focus on the immediate -- that's a big part of our job. People join unions and pay dues to have their work issues addressed and their jobs protected. So we tend to see JT as a vehicle for fighting for the needs of those losing their jobs today due to economic, ecological, and technological transitions. For those of us working on systems change, and fighting to create a better world, we see JT as a vehicle for the creation of new, locally based, economies constructed around principles of equality for all and local control -- a more robust democracy where gender, race and class bias fades into the past.

These are not mutually exclusive needs and goals. So we ask our labor friends to see beyond the worksite and look to the future where union and community come together, where unions can fight for the creation of a better world. We ask our community and environmental friends to help bring justice to coalminers losing their pensions, and workers throughout the economy who through no fault of their own are being thrown on the scrap heap of history, in a world where scrap metal commands a price, but human beings are discarded.

We at the Labor Network for Sustainability and the Grassroots Policy Project are committed to taking down silos and helping to construct a common vision. This Just Transition Landscape Analysis is our joint first step in that direction.

We know this is hard. We have to construct a new center of gravity around a common vision, and construct mechanisms for paying for a Just Transition, which includes development of legislative language. At the same time, we need to integrate our vision of a better world, a better society, and educate about the pathways to getting there. Taking care of the immediate while working for the great changes we need is no easy task, but with the people in the room we have many of the answers, and the some of the resources. What's been lacking is a willingness to work together on a common vision. That willingness was apparent when we all met together.

We know that frontline communities -- including workers and indeed all those threatened or already devastated by climate change and the fossil fuel economy -- must be leaders in this fight. We know that we need to build a regenerative ability to stay in place and not be displaced and that and that we must prioritize issues of race, class, and gender. We know that band-aids alone won't work, but when you're bleeding you use band-aids as a stop-gap measure while seeking real systems change. In other words, we need immediate and transformative elements and we all need to commit to this holistic view.

Challenges remain and the path forward is full of pitfalls and possibilities. We know we need a strategy for power to win Just Transition, and we know we have a deadline due to the alarming advance of global warming and climate change. This is a start down the path toward a healthy planet, healthy people, and healthy communities with a society, economy, and politics that honors humanity over a piece of pavement called Wall St.

The final discussion of the April 2016 Just Transition gathering identified some broad questions that can help guide future dialogue:

- ☐ The transition we are in is the largest transition in human history and will require more capital and technical coordination than anything done before. How do we reconcile that with the need for local, community-based democratic control?
- ☐ How can we combine the need for both immediate tactical considerations and broad strategic vision, for helping those in need while we fight for a vision of a just and democratic society and economy?
- ☐ There are varied points of view about just transition. How do we create a frame that can accommodate multiple points of view?
- ☐ We need approaches that can inspire people to organize with more trust and zeal. How do we create organizations that aren't strictly oppositional but also propositional? Not just about deconstruction but about construction as well?
- ☐ Just transition needs to be more than just a policy or a program. How do we develop common guiding principles? And how do we develop a strategy that draws together the forces that are necessary to recapture democracy and reassert community power over the economy and the environment?
- ☐ How can we develop a program of specific major reforms like full employment that could unify our movements and translate our aspirations into goals that we can actually realize?
- ☐ Fights must be rooted in place but there are levels above the local that will influence each fight. How can we build alliances statewide and nationwide to build a bulwark against larger scale aggressors influencing community decisions?

□ How can we build the necessary long-term trust and relationships that our conversations about just transition require in a situation we don't have the time to dawdle?

We hope that the perspectives and stories contained in this report contribute to mutual understanding and respect among those who are struggling to make the transition that is upon us a just one. With that, we think we will find a common vision and a new center of gravity around a shared definition of what a “just transition” actually can be.

Interviews

Between October, 2015 and March, 2016 Christina Roessler, accompanied at times by Joe Uehlein and Richard Healey, conducted 17 interviews concerning the term and concept “just transition.” The interviews included (in alphabetical order)

Brad Markell, AFL-CIO Industrial Union Council, 2/4/16

Matt Ryan, ALIGN: The Alliance for Greater New York, 12/1/15

Miya Yoshitani, Asian Pacific Environmental Network, 12/1/15

Ajamu Dillahunt, Black Workers for Justice, 1/25/16

Mike Williams, BlueGreen Alliance, 1/15/15

Michael Guerrero, Climate Justice Alliance, 12/2/15

Brendan Smith, GreenWave, 3/16/16

Burt Lauderdale, Kentuckians for The Commonwealth, 10/21/15

Joe Uehlein, Labor Network for Sustainability, 3/10/16

Gopal Dayaneni, Movement Generation, 11/23/15

Jordan Estevao, National People’s Action, 1/7/16

Jonathan Rosenthal, New Economy Coalition, 1/12/16

Aiden Graham and Justine Oller, NC League of Conservation Voters, 1/15/16

Barbara Byrd, Oregon AFL-CIO, 2/17/16

Aaron Bartley, PUSH Buffalo, 11/19/15

Dean Hubbard, Sierra Club, 1/19/16

Aaron Mair, Sierra Club Board Chair, 2/8/16

To: Kari Fulton[kari@empowerdc.org]; Ali, Mustafa[Ali.Mustafa@epa.gov]
Cc: leslie.fields@sierraclub.org[leslie.fields@sierraclub.org]; Wilson, Holly[Wilson.Holly@epa.gov]; Benforado, Jay[Benforado.Jay@epa.gov]; [Ex. 6 - Personal Privacy] Adrienne Hollis[adrienne@weact.org]; McCullough, Melissa[Mccullough.Melissa@epa.gov]; Mcallister, Lauren[mcallister.lauren@epa.gov]
From: King, Marva
Sent: Wed 8/31/2016 1:23:13 PM
Subject: RE: Looking to join planning committee for October Meeting
Training Education and Outreach Track Team - Notes from discussion on 8 18 final.docx

My goodness Kari!

Your email must have dropped off my radar screen. Please forgive me.

The Health and Environmental Resources Team has been meeting and are developing their sessions. **The next team meeting is tomorrow at 2 pm. The call in number is: Call In:** [Ex. 6 - Personal Privacy]
[Ex. 6 - Personal Privacy]

I will forward the calendar invite to you immediately and will notify the team leads of you joining the team late (**DUE TO MY MISHAP**) via this email.

I've pasted below the description for your team and your team members. Your three team leads are indicated in bold.

I have also attached the notes from their last weekly call as background information on what the team have been discussing.

Health and Environmental Resources:

Draft Description (changes from team suggestions highlighted in blue)

This track will explore the challenges, barriers, and impacts that communities face and address how communities can build capacity to learn from these lessons and best practices to better understand and solve this problem. This track will focus on environmental and public health issues, in the larger context of other social and economic issues vital to community

development. A series of sessions will cover a range of topics including:

- Information and training about available technical tools and resources;
- How to apply for grants and other funding for specific projects;
- Approaches to community-driven authentic, transformative, and equitable partnerships with local institutions (from community colleges to local businesses to community foundations), and,
- Overview of some exciting new approaches like citizen science and community monitoring.

Speakers will represent a variety of perspectives and experiences including from environmental justice groups and other Non-Governmental Organizations, EPA and other Federal agencies, as well as academics, business and philanthropic organizations. Community speakers will share success stories from their own communities, and practical “how to” information that will truly serve the interest of the community.

Health and Environmental Resources

●■■■■■■■ **Dr. Scheherazade W. Forman (PG Community College) ***
(sforman@pgcc.edu)

●■■■■■■■ Dr. Beverly Wright (Deep South Center, Dillard University)
(**Ex. 6 - Personal Privacy**)

●■■■■■■■ Dr. Sacoby Wilson (University of MD College Park) (swilson2@umd.edu)

●■■■■■■■ Sandra Howard and Chanya Liv (HHS-OS/OASH)
(Sandra.Howard@HHS.GOV and Chanya.Liv@hhs.gov)

●■■■■■■■ Dr. Erica Holloman (Southeast CARE Coalition) (**Ex. 6 - Personal Privacy**)

●■■■■■■■ **Dr. Adrienne Hollis (WE ACT) *** (adrienne@weact.org)

●■■■■■■■ Dr. Jalonnie White-Newsome (Kresge foundation) (jlwhite-newsome@kresge.org)

●■■■■■■■ Dr. Rubin Patterson (Howard University) (rubin.patterson@howard.edu)

●■■■■■■■ Dr. Sue Briggum (Waste Management) (sbriggum@wm.com)

●■■■■■■■ Sonya Neal Reeves (USDA) (sonya.neal-reeves@wdc.usda.gov)

- Dr. Marybeth Smuts and Dr. Rhona Julien (EPA R1)
(smuts.marybeth@epa.gov and Julien.rhona@epa.gov)
- Cassandra Allen (HHS/NIH) (Cassandra.Allen@nih.hhs.gov)
- **Jay Benforado and Melissa McCullough (EPA-ORD)***
(Benforado.jay@epa.gov and McCullough.melissa@epa.gov)
- Lauren Mcallister, (EPA-ORD), (mcallister.lauren@epa.gov)
- Bernadette Grafton (Brownfields) (Grafton.bernadette@epa.gov)
- Maggie Tishman, Director, Emerald Cities, New York
(mtishman@emeraldcities.org)
- Kamita Gray, Brandywine/TB Southern Region Neighborhood Coalition
(btbcoalition@gmail.com)
- Matt Campbell, (DHS-FEMA) (Matt.Campbell@fema.dhs.gov)
- Cerasani, Gina, EPA-OGC, (Cerasani.Gina@epa.gov)
- Val Swan-Townsend (EPA-OARM-OGD), (swan-townsend.val@epa.gov)
- Jessica Durand (EPA-OARM-OGD), (Durand.jessica@epa.gov)
- Jerome Shabazz, Jastech Development Services, Inc.,
(jerome@jastechdevelopment.org)
- Cynthia Peurifoy, (EPA R 4), (Peurifoy.cynthia@epa.gov)
- **Dennis Chestnut, (Groundwork DC)**, (dennis@groundworkdc.org)
- Darryl Haddock, West Atlanta Watershed, (darryl@wawa-online.org)
- Kari Fulton, Empower DC, (kari@empowerdc.org)

Again, so sorry for the lateness of my follow-up email to you. I hope you can join the team call tomorrow.

Peace and Blessings,

Marva

Marva E. King, Ph.D.

Senior Policy Advisor

EPA's Office of EJ

WJC South 2224A

1200 Pennsylvania Av., NW (MC 2201)

Washington, DC 20460

Phone: 202-564-2599

Fax: 202-501-1107

Cell: 202-360-6053

“My mission in life is not merely to survive, but to thrive; and to do so with some passion, some compassion, some humor, and some style” – Maya Angelo

-

“ The time is always right to do what is right” – Dr. Martin Luther King, Jr.

From: Kari Fulton [mailto:kari@empowerdc.org]

Sent: Wednesday, July 20, 2016 1:11 PM

To: King, Marva <King.Marva@EPA.GOV>; Ali, Mustafa <Ali.Mustafa@epa.gov>

Cc: leslie.fields@sierraclub.org; Wilson, Holly <Wilson.Holly@epa.gov>

Subject: RE: Looking to join planning committee for October Meeting

Hi Dr. King,

Thank you for sending this and please accept my apologies on the delayed response. We would like to join the Health and Environment Track. Please keep me posted on the next meeting and if there is anything you may need from us at Empower DC leading up to the planning meetings.

Please have a great and grand day!

Many blessings,

Kari

From: King, Marva [<mailto:King.Marva@EPA.GOV>]

Sent: Wednesday, July 13, 2016 4:44 PM

To: Kari Fulton <kari@empowerdc.org>; Ali, Mustafa <Ali.Mustafa@epa.gov>

Cc: leslie.fields@sierraclub.org; Wilson, Holly <Wilson.Holly@epa.gov>

Subject: RE: Looking to join planning committee for October Meeting

Wonderful!

Kari -- you are right on time to get involved.

I've pasted below some background information on the Summit. You should let Holly Wilson (cc'd) and me know as soon as possible which track team (see highlighted section below) you'd like to be placed on. The bulk of the planning for the Summit is being done on the teams. The teams will meet before August 1st.

If you have any questions – just send Holly and I an email.

Background

The National Funding Resources and Training Summit to Revitalize Vulnerable Communities will enhance collaboration around environmental, health and economic concerns (e.g., climate change, goods movement, just transition workforce development, business entrepreneurship, financial institutional education, etc.) and ensure vulnerable populations have access to information, services, and data for increased resilience, engagement, and sustainability. The Summit will be held October 25-26, 2016 in Arlington, VA at the Crystal City Marriott.

The Summit will be divided into 3 concurrent tracks:

- **Just transition workforce development training**
- **National financial resources and business development (e.g., small business entrepreneurship, public-private partnerships, etc.)**
- **Health and environmental technical training, education and outreach**

The Summit will offer information from academia, foundations, nonprofits, and federal agencies to educate, share, and increase the communities understanding of available resources for addressing their concerns, and focusing on collaborative opportunities for building healthy sustainable and equitable communities. The Summit will highlight best practices from community-based organizations and partnerships, outline challenges faced in economically distressed communities, and highlight resources, tools and techniques available to achieve sustainable success. We are expecting approximately 250 participants.

In an effort to accommodate people could are unable to travel to physical venue, selected (opening and closing plenaries, one session from each track) portions of the Summit will be simulcast from the venue for remote audience participation. Participants will be able to view, listen and ask questions from their desks.

EPA will lead two educational webinars.

Peace,

Marva

Marva E. King, Ph.D.

Senior Policy Advisor

EPA's Office of EJ

WJC South 2224A

1200 Pennsylvania Av., NW (MC 2201)

Washington, DC 20460

Phone: 202-564-2599

Fax: 202-501-1107

Cell: 202-360-6053

“My mission in life is not merely to survive, but to thrive; and to do so with some passion, some compassion, some humor, and some style” – Maya Angelo

-

“ The time is always right to do what is right” – Dr. Martin Luther King, Jr.

From: Kari Fulton [<mailto:kari@empowerdc.org>]

Sent: Wednesday, July 13, 2016 4:07 PM

To: Ali, Mustafa <Ali.Mustafa@epa.gov>; King, Marva <King.Marva@EPA.GOV>

Cc: leslie.fields@sierraclub.org

Subject: Looking to join planning committee for October Meeting

Hi Mustafa and Dr. King,

Hope all is blessed and well! Recently I joined Empower DC as their Environmental Justice Organizer to launch a DC Environmental Justice Campaign. Leslie Fields of the Sierra Club mentioned the meeting you all are planning In October at the EPA offices and thought it would be good if I reached out to get more involved. If possible I would love to join the planning committee and find ways that we can bring Empower DC's network to the table of this conversation.

Please keep me posted on ways to get involved and I hope to talk with you all again soon!

Many blessings,

Kari Fulton

Kari Fulton

Environmental Justice Organizer

Empower DC

1419 V St. NW

Washington, DC 20009

202-340-0976

@empowerDC III www.EmpowerDC.org

Health and Environmental Technical Training, Education and Outreach Track

Summary of second teleconference call

August 18th, 2016

Summary: We agreed that the track description is in good shape. We spent most of the time discussing the relative priority of the different session topics – and which ones would be of most value and interest for participants at the Summit. Listed below is our initial sense (based on the people on the call) about which sessions to begin to develop). We agreed that the proposed template is good – we should aim for sessions that are about an hour to an hour and 15 minutes long. We will ask people to prepare the short summary of proposed sessions, so that we can begin to focus our weekly meetings on discussing session proposals. We identify in the list below proposed leaders to prepare the first draft (note: This does not mean that these people necessarily have to provide the long-term leadership). We will set up a separate discussion with Marva, Beverly, Kamita and Sacoby to better characterize the outreach and community engagement topic, which was seen as a critical “umbrella” topic for the session (not just a separate session topic).

Participants: *Full list of people who are helping to plan our track is in the Attachment*

Jay Benforado (co-chair) and Lauren McAllister, EPA Office of Research and Development

Melissa McCullough (co-chair) EPA Office of Research and Development

Scheherazade Forman (co-chair) PG Community College

Jessica Durand, EPA-OARM-OGD

Bernadette Grafton, Brownfields

Sandra Howard, HHS-OS/OASH

Rhona Julien, EPA R1 (New England)

Marva King, EPA Office of Environmental Justice

Laura McKelvey, OAR-OAQPS-OID-CTPG

Beverly Wright, Deep South Center, Dillard University

Holly Wilson, EPA Office of Air and Radiation

Finalized Track Description

This track will explore the challenges, barriers, and impacts that communities face and address how communities can build capacity to learn from these lessons and best practices to better understand and solve this problem. This track will focus on environmental and public health issues, in the larger context of other social and economic issues vital to community development. A series of sessions will cover a range of topics including:

- Information and training about available technical tools and resources;
- How to apply for grants and other funding for specific projects;
- Approaches to community-driven authentic, transformative, and equitable partnerships with local institutions (from community colleges to local businesses to community foundations); and,
- Overview of some exciting new approaches like citizen science and community monitoring.

Speakers will represent a variety of perspectives and experiences including from environmental justice groups and other Non-Governmental Organizations, EPA and other Federal agencies, as well as academics, business and philanthropic organizations. Community speakers will share success stories from their own communities, and practical “how to” information that will truly serve the interest of the community.

Session Topic Ideas – Community Engagement Overall Theme

- 1. Role of community colleges and other academic institutions (Scheherazade Forman)**
 - Focus on how to include community colleges in a more unified way
- 2. Techniques for Applying for Grants – “Grants 101 Training” (Marva King)**
 - This practical training session could be interagency (e.g., EPA, HHS, USDA) as well as private (e.g., foundations)
 - Highlight various ways in which communities can apply for grants
- 3. FEMA – Disaster recovery (Matt Campbell)**
 - Hold a presentation/training focused on disaster recovery in communities
 - Matt (Dept of Homeland Security) said that he could arrange one of several trainings on planning, risk reduction, community resilience.
 - Could also address pre-disaster planning for recovery and educate on post-event planning and community engagement for long term recovery.
- 4. Demo – EJ Screen (Sue Briggum)**
 - EJ Screen is an EPA tool that details EPA factual data such as, regulatory facilities, traffic impacts, land use planning, Superfund sites, etc., through a Geospatial Information System (GIS) platform
 - Provide a description of tools communities can use and how you can better understand your community
 - Exemplify how communities can use tools like EJ screen independently
- 5. Panel on a variety of technical tools for communities (Marva King)**
 - Demonstrate the number of tools designed to help communities, especially vulnerable communities. Could have a panel from other agencies.
 - Could include an overview of a set of EPA tools
- 6. Climate Change (Bernadette Grafton)**
 - Session could focus on long term reuse and cleanup of Brownfield sites
 - Could focus on environmental and technical worker’s health and safety (but this might be part of a different track)
 - Issues surrounding the Clean Power Plan
 - i. Clean energy incentive program
 - How communities can adapt their plans for climate change
- 7. Outreach/Community Engagement (Kamita Gray)**
 - How to partner with the broader community to enrich students so that they may

- effectively contribute to the community in the long-term
- How can community colleges receive technical assistance from other sources
- 8. Engaging youth in community problem solving (Jerome Shabazz, others?)**
 - Showcase examples of effective programs
 - How can more programs be deployed to support the youth in communities
 - Opportunities for problem solving
 - i. Economic opportunities – career paths for young people
 - ii. Pipeline for employment opportunities for the built and natural environment
 - iii. Case study: Philadelphia green infrastructure (Jerome Shabazz)
- 9. Resources for community members to access data about community health issues (Erica Holloman)**
 - Community-specific data through health tools
 - Incorporate academic institutions as a resource for health data and tools
- 10. Highlight specific environmental & health concerns for EJ communities (lead, asthma, mercury, etc.)**
 - Include researchers and scientists that have worked effectively with communities
 - Cumulative risk tools
 - Could focus on children's health
- 11. Research tools that engage communities in risk assessment**
 - Focus on heavy long-term studies on community members and health
 - How do we make studies like these trustworthy, safe, etc. for the community
- 12. Citizen science and community monitoring (Jay Benforado)**
 - Provide examples of successful community-driven citizen science projects
 - Provide "how-to" information about how a community can become involved in citizen science
 - Low cost air sensors (Sacoby Wilson) – potential for a demonstration?
- 13. Conflict resolution/collaboration (Gina Cerasani)**
 - Gina will share her thoughts on how this might work
- 14. Small and local businesses**
 - How to collaborate with and support local/community/small businesses
- 15. Partnering with community foundations**
 - Will be a session during the "working lunch" on day one
 - This session would explain the role of community foundations and how to work with them. Could do a panel of a few foundation people and community leaders that have worked successfully with foundations
 - Jay will talk to Stephanie Powers (Council of Foundation)s and identify specific foundations that might be interested in participating
- 16. Models of community engagement (Sacoby Wilson)**
 - Expand on the challenges communities face in this area
- 17. Increasing environmental health literacy through improved access to data (Sacoby Wilson and Darryl Haddock)**
 - Data dissemination scales
 - i. Small scale data distribution
 - 1. Utilization of libraries/science centers

ii. What are the other scales that make sense to distribute data through?

- Environmental health literacy and communication
- Outreaching data to the community
- Increased access to data

18. The role of public comment (Erica Holloman)

- Need more info about what might be covered in this session

19. Increasing Community Resiliency – social, health, political

- How to implement your vision for your community -- to get a bigger picture
- Potential for a joint session with another track

20. Building the Next Generation of Climate Justice Leaders

(Marsha Minter suggested – she is EPA rep on Federal EJ Interagency Working Group) – Could be combined with #6 (Climate Change) or #8 Engaging Youth)

- If the future belongs to our youth, then we must include our youth in addressing the key issues they will inherit, such as climate change and climate justice.
- The EJ IWG launched the Educate, Motivate, Innovate (EMI) Climate Justice Initiative to build collaborative relationships between federal government agencies and Minority-Serving Institutions, Hispanic Serving Institutions and Asian American and Native American Pacific Islander Serving Institutions.
- EMI goals are to educate by providing a two-way learning experience, motivate by igniting interest, and innovate by embracing opportunities for creative thought and action.

21. Children's Health Issues

- EPA's Office of Children's Health (Ted Coopwood) and on behalf of their multi-stakeholder Presidents Task Force on Children's Health requested that we add "children's health issues" to our list of Session Topic Ideas.

Proposed Combined Sessions (**Sessions with a lot of interest)

1. Role of community colleges and other academic institutions (Lead: Scheherazade Forman)
2. Techniques for Applying for Grants – "Grants 101 Training" (Leads: Marva King, Jessica Durand, Laura McKelvey)
6. Climate Change/FEMA – Disaster Recovery (Leads: Bernadette Grafton, Laura McKelvey, Beverley Wright) **
8. Engaging youth in community problem solving (Lead: Jerome Shabazz)
12. Citizen science and community monitoring **
16. Models of community engagement (Lead: Sacoby Wilson)
17. Increasing environmental health literacy through improved access to data (Leads: Sacoby Wilson and Darryl Haddock) **
20. Building the Next Generation of Climate Justice Leaders **

Sessions Proposed for Ecocafe

4. EJ Screen Demo (Ecocafe)
11. Research tools that engage communities in risk assessment (Ecocafe)
18. The role of public comment (Ecocafe)

Topics that Need Discussion:

5, 7, 9, 10, 13, 14, 15, 19, 21

Action Items

- Identify four community leaders to sponsor (note: Marva and Holly have funding for us to invite four community leaders to make presentations in our track)
- Brainstorm specific people to invite to speak or lead sessions
- Identify possible materials or resources needed for the sessions

The next call for the Health and Environmental Technical Training, Education and Outreach Track Team will be Thursday August 25, 2016 from 2-3 pm (EST).

Call in number Ex. 6 - Personal Privacy conference code is Ex. 6 - Personal Privacy

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Marianne Engelman Lado
Sent: Mon 9/19/2016 2:45:26 AM
Subject: Re: 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities

Thanks. I'll follow up!

Sent from my iPhone
Apologies for brevity and errors

On Sep 18, 2016, at 10:44 PM, Ali, Mustafa <Ali.Mustafa@epa.gov<mailto:Ali.Mustafa@epa.gov>>
wrote:

Marianne,

I wanted to personally make sure you knew about the 2016 National Training and Resources Summit for Revitalizing Vulnerable Communities on October 25th<x-apple-data-detectors://0> & 26th. This inaugural Summit is the first of its kind and specifically focused on identifying resources, technical assistance and economic opportunities for our communities...If you have any questions give me a buzz or email...

Please share the link with stakeholders who would benefit from participating in the Summit:
<http://www.survivingtothrivingsummit.org><<http://www.survivingtothrivingsummit.org/>>

Blessings
Mustafa

Sent from my iPhone

To: ignacia[ignacia@imorenogroup.com]; Ex. 6 - Personal Privacy Liz Perera[Liz.Perera@sierraclub.org]; Terry McGuire[Terry.McGuire@sierraclub.org]; Kerene Tayloe[kerene@weact.org]; Ali, Mustafa[Ali.Mustafa@epa.gov]; Jalonne White-Newsome[jalonne@weact.org]; Stephanie Maddin[smaddin@earthjustice.org]
From: Leslie Fields
Sent: Tue 1/12/2016 11:03:32 PM
Subject: Thanks for a lovely lunch
[20160112_135706.jpg](#)

Thank you all for coming out to Jalonne's lunch. Congratulations Jalonne we love you & we know you're going to do great things at Kresge. God bless & keep you!

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Marianne Engelman Lado
Sent: Thur 8/11/2016 9:49:30 PM
Subject: Message

Mustafa,

Hope you're well.

I just left you a message: I was hoping to give you the heads up on an issue and, also, to get some feedback. Please let me know if you have a few minutes.

Best,

Marianne

Marianne Engelman Lado

Senior Staff Attorney

Earthjustice

48 Wall Street, 19th Floor

New York, NY 10005

T: 212.845.7393

F: 212.918.1556

earthjustice.org



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To: GreenLeaders (GreenGDIExt@rabengroup.com)[GreenGDIExt@rabengroup.com]
Cc: Chris Espinosa[cespinosa@earthjustice.org]
From: g20workgrp@rabengroup.com
Sent: Wed 4/15/2015 8:11:05 PM
Subject: Referrals for Administration Positions?

Hi Friends,

I have a friend that recruits for the Administration that is looking for referrals with this background:

Do you happen to know any people with 10+ years of experience doing land/water/ecosystems type of work that might be interested in joining the administration?

Please forward contacts and I'll share with the point person. Thanks!

Stephanie Maddin

Legislative Counsel

Earthjustice D.C. Office

1625 Massachusetts Avenue NW

Suite 702

Washington DC, 20036

T: 202-745-5210

F: 202-667-2356

earthjustice.org

facebook.com/earthjustice

twitter.com/earthjustice



Because the earth needs a good lawyer

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Jessica Hodge
Sent: Tue 9/29/2015 7:34:44 PM
Subject: RE: Signing ceremony for Refinery Rule

Hey Mustafa- Can we use these pics on social media? Also do we need to give photo credit?

These are great thanks

-----Original Message-----

From: Ali, Mustafa [mailto:Ali.Mustafa@epa.gov]
Sent: Tuesday, September 29, 2015 3:23 PM
To: Stephanie Maddin
Cc: Jessica Hodge
Subject: RE: Signing ceremony for Refinery Rule

Second set of pics.

-----Original Message-----

From: Stephanie Maddin [mailto:smaddin@earthjustice.org]
Sent: Monday, September 28, 2015 5:51 PM
To: Ali, Mustafa
Cc: Jessica Hodge
Subject: RE: Signing ceremony for Refinery Rule

Pics would be great!! Please forward to both Jessica and I. She's cc'ed.

Sent on the new Sprint Network from my Samsung Galaxy S(r)4.

----- Original message -----

From: "Ali, Mustafa"
Date: 09/28/2015 5:50 PM (GMT-05:00)
To: Stephanie Maddin
Cc: Jessica Hodge
Subject: Re: Signing ceremony for Refinery Rule

Stephanie,

Unfortunately, we won't be able to do that this time but I can make sure that the Agency Photographer shares the photos from the event as soon as it is finished if that would be helpful?

Blessings
Mustafa

Sent from my iPhone

> On Sep 28, 2015, at 4:26 PM, Stephanie Maddin <smaddin@earthjustice.org> wrote:

>

>

> Hi Mustafa!

>

> We are excited to know Hilton Kelley will be in the room for the signing of the Refinery air toxics rule. Is there an opportunity for anyone from our shop to be present? We mainly want to take pics. I'm recovering from oral surgery so we hope our Clean Air Campaign Manager Jessica Hodge could attend. Please

advise asap!

>

> Kind regards,

>

> Stephanie Maddin

> Earthjustice

>

> Sent on the new Sprint Network from my Samsung Galaxy S(r)4.

To: Jalonne White-Newsome[jalonne@weact.org]; Liz Perera[Liz.Perera@sierraclub.org]; Stephanie Maddin[smaddin@earthjustice.org]; ignacia[ignacia@imorenogroup.com]; Ali, Mustafa[Ali.Mustafa@epa.gov]; Vernice Miller-Travis[vmiller-travis@skeo.com]; arroyo@law.georgetown.edu[arroyo@law.georgetown.edu]; Terry McGuire[Terry.McGuire@sierraclub.org]; Tina Johnson[tjohnson@usclimatenetwork.org]; Kerene Tayloe[kerene@weact.org]
From: Leslie Fields
Sent: Tue 1/12/2016 3:02:28 PM
Subject: REMINDER Jalonne lunch today at 12.30 at Georgia Brown's

Hi Everybody

Thanks for responding. Don't forget we're toasting Jalonne today at Georgia Brown's from 12.30 to 2pm, 950 15th St NW. Thanks, Leslie

--

Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
Cc: Jessica Hodge[jhodge@earthjustice.org]
From: Stephanie Maddin
Sent: Tue 9/29/2015 7:32:12 PM
Subject: RE: Signing ceremony for Refinery Rule

Thanks so much!!

Sent on the new Sprint Network from my Samsung Galaxy S®4.

----- Original message -----

From: "Ali, Mustafa"
Date: 09/29/2015 3:26 PM (GMT-05:00)
To: Stephanie Maddin
Cc: Jessica Hodge
Subject: RE: Signing ceremony for Refinery Rule

Last set...

-----Original Message-----

From: Stephanie Maddin [mailto:smaddin@earthjustice.org]
Sent: Monday, September 28, 2015 5:51 PM
To: Ali, Mustafa
Cc: Jessica Hodge
Subject: RE: Signing ceremony for Refinery Rule

Pics would be great!! Please forward to both Jessica and I. She's cc'ed.

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Cc: Jessica Hodge
Subject: Re: Signing ceremony for Refinery Rule

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Blessings
Mustafa

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> We are excited to know Hilton Kelley will be in the room for the signing of the Refinery air toxics rule. Is there an opportunity for anyone from our shop to be present? We mainly want to take pics. Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy so we hope our Clean Air Campaign Manager Jessica Hodge could attend. Please advise asap!

>

> Kind regards,

>

> Stephanie Maddin

> Earthjustice

>

> Sent on the new Sprint Network from my Samsung Galaxy S(r)4.

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
Cc: 'Fields, Leslie'[leslie.fields@sierraclub.org]
From: Vernice Miller-Travis
Sent: Mon 1/11/2016 4:39:25 PM
Subject: Re: Luncheon for Jalonne White-Newsome, January 12 at 12.30-2pm at Georgia Brown's restaurant

We look forward to seeing you tomorrow Mustafa.

Vernice

Vernice Miller-Travis
Senior Associate
Community Planning and Revitalization Group
Skeo Solutions
www.skeo.com
301-537-2115

From: Ali, Mustafa <Ali.Mustafa@epa.gov>
Sent: Monday, January 11, 2016 10:23 AM
To: Leslie Fields; Vernice Miller-Travis
Subject: RE: Luncheon for Jalonne White-Newsome, January 12 at 12.30-2pm at Georgia Brown's restaurant

Leslie,

I would like to join if it's not too late.

Blessings

Mustafa

From: Leslie Fields [mailto:leslie.fields@sierraclub.org]
Sent: Tuesday, January 05, 2016 7:41 PM
To: King, Marva <King.Marva@EPA.GOV>; Ali, Mustafa <Ali.Mustafa@epa.gov>; Tina Johnson <tjohnson@usclimatenetwork.org>; ignacia <ignacia@imorenogroup.com>; Stephanie Maddin <smaddin@earthjustice.org>; Deeohn Ferris

<deehnn@sustainablecommunitydevelopmentgroup.org>; bekwurzel@ucs.org;
NPearson@ucsusa.org; Ahuertas@ucsusa.org; Lætitia A. N'Dri [Ex. 6 - Personal Privacy];
arroyo@law.georgetown.edu; plapuma@gwu.edu; Liz Perera <Liz.Perera@sierraclub.org>;
Terry McGuire <Terry.McGuire@sierraclub.org>; Radha Adhar <Radha.Adhar@sierraclub.org>;
Quentin James [Ex. 6 - Personal Privacy]; monica.pham [Ex. 6 - Personal Privacy]; Simpson, Moshay
<Simpson.Moshay@epa.gov>; Sacoby Wilson <swilson2@umd.edu>; Danielle Deane
<ddeane@rabengroup.com>; Vernice Miller-Travis <vmiller-travis@skeo.com>; Kerene Tayloe
<kerene@weact.org>
Cc: Jalonne White-Newsome <jalonne@weact.org>
Subject: Luncheon for Jalonne White-Newsome, January 12 at 12.30-2pm at Georgia Brown's
restaurant

Dear Friends of Jalonne (FOJs)

Vernice Miller-Travis and I would like you to join us for lunch to toast, honor and send-off our great colleague and friend Jalonne as she moves on to a wonderful new job at the Kresge Foundation and returns to her roots in Michigan. We will be lunchin' at Georgia Brown's restaurant: 950 15th St NW, right by McPherson Sq Metro.

PLEASE let me know by Jan. 8 cob if you can attend. I need to give the count to the restaurant. Thanks and hope see you next week!

Leslie and Vernice

--

Leslie G. Fields

Director, Environmental Justice & Community Partnerships Program

Sierra Club

50 F Street NW, Eighth Floor

Washington, DC 20001

202-548-4586

Leslie.Fields@sierraclub.org

www.sierraclub.org/ejcp

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
Cc: Jessica Hodge[jhodge@earthjustice.org]
From: Stephanie Maddin
Sent: Tue 9/29/2015 7:25:11 PM
Subject: RE: Signing ceremony for Refinery Rule

You rock!!

Sent on the new Sprint Network from my Samsung Galaxy S®4.

----- Original message -----

From: "Ali, Mustafa"
Date:09/29/2015 3:21 PM (GMT-05:00)
To: Stephanie Maddin
Cc: Jessica Hodge
Subject: RE: Signing ceremony for Refinery Rule

Hey you guys here are the pics I promised.

-----Original Message-----

From: Stephanie Maddin [mailto:smaddin@earthjustice.org]
Sent: Monday, September 28, 2015 5:51 PM
To: Ali, Mustafa
Cc: Jessica Hodge
Subject: RE: Signing ceremony for Refinery Rule

Pics would be great!! Please forward to both Jessica and I. She's cc'ed.

Sent on the new Sprint Network from my Samsung Galaxy S(r)4.

----- Original message -----

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Date:09/28/2015 5:50 PM (GMT-05:00)
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Cc: Jessica Hodge
Subject: Re: Signing ceremony for Refinery Rule

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Ex. 6 - Personal Privacy so we hope our Clean Air Campaign Manager Jessica Hodge could attend. Please advise asap!

>

> Kind regards,

>

> Stephanie Maddin

> Earthjustice

>

> Sent on the new Sprint Network from my Samsung Galaxy S(r)4.

To: GreenLeaders (GreenLeaders@rabengroup.com)[GreenLeaders@rabengroup.com]
From: Stephanie Maddin
Sent: Wed 8/20/2014 5:38:18 PM
Subject: FW: Earthjustice: DC Office Assistant Position

Please Share!

About Earthjustice

Founded in 1971, Earthjustice is the premier nonprofit environmental law organization. We take on the biggest, most precedent-setting cases across the country. We wield the power of law and the strength of partnership to protect people's health; to preserve magnificent places and wildlife; to advance clean energy; and to combat climate change. We partner with thousands of groups, supporters and citizens to engage the critical environmental issues of our time, and bring about positive change. We are here because the earth needs a good lawyer.

Position: Office Assistant

Location: Washington, DC

Department: Administration

Job Type: Full Time

The Office Assistant will work under the direct supervision of the Office Manager to provide administrative support for the Washington, D.C. Office. This position is essential in providing an efficiently-operated office.

Essential Duties and Responsibilities

- Ensure overall office appearance, housekeeping and organization, which include upkeep of the kitchen, conference rooms, and copy rooms
- Greet office guests and meeting attendees
- Maintain conference room calendars
- Assist the Vice President of Litigation and Managing Attorneys with

administrative tasks as needed

- [] [] [] [] [] [] [] [] Oversee the calendaring and coordination of video-conferencing equipment
- [] [] [] [] [] [] [] [] Sign for packages; receive and sort U.S. mail, send out Federal Express, UPS and USPS packages
- [] [] [] [] [] [] [] [] Assist with preparation of employee reimbursement requests
- [] [] [] [] [] [] [] [] Respond to public inquiries
- [] [] [] [] [] [] [] [] Assist Office Manager with external vendors and building management
- [] [] [] [] [] [] [] [] Act as liaison between D.C. staff and IT department in addition to working closely with on-site IT representative to resolve urgent matters
- [] [] [] [] [] [] [] [] Office point person for visiting staff logistics
- [] [] [] [] [] [] [] [] Maintain office inventory and unload stock orders
- [] [] [] [] [] [] [] [] Handle staff office equipment inquires
- [] [] [] [] [] [] [] [] Assist with planning and placement of catering orders and hotel bookings for large meetings
- [] [] [] [] [] [] [] [] Conduct general research on various topics including recycling policies, hotel rates, conference facilities, transportation services for staff and visitors
- [] [] [] [] [] [] [] [] Assist the Litigation and Policy departments on large document production
- [] [] [] [] [] [] [] [] Cover for the Office Manager, when necessary
- [] [] [] [] [] [] [] [] Other tasks as needed

Requirements

- [illegible]

- Excellent computer skills, including a solid understanding of the Microsoft Office suite (ideally 2010) and Adobe Acrobat
- Outstanding problem-solver and proactive thinker
- Strong ability to multi-task, exceptional organizational skills with great attention to detail
- Excellent verbal and written communication skills
- Ability to work with a variety of people and also independently with little supervision
- Sense of humor
- Interest in environmental issues a plus
- Some weekend and off hour work required

Earthjustice offers a mission and employee-focused work environment and a competitive compensation package including excellent benefits. Diversity is highly valued.

To Apply

Interested candidates should submit a resume along with cover letter to eajusdc_jobs@earthjustice.org. Please include “Office Assistant” in the subject line.

NO TELEPHONE CALLS WILL BE ACCEPTED.

Earthjustice Values

Earthjustice is driven by a passion for justice, partnership and excellence. Our core values lead us to seek a broad range of perspectives and backgrounds to achieve our mission and to maintain an inclusive environment where all staff are valued and respected.

As an equal opportunity employer, we are committed to employment practices that ensure that

employees and applicants for employment are provided with equal opportunities without regard to race, color, national origin, ancestry, sex, age, religion, physical or mental disability, medical condition, veteran status, marital status, pregnancy, sexual orientation, gender identity, genetic information or any other factor that is not related to the position.

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<http://list.earthjustice.org/scripts/wa-EARTH.exe?SUBED1=50STATESUNITED&A=1>

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Neil Gormley
Sent: Sat 11/28/2015 3:01:38 PM
Subject: FW: Stream Protection Rule Letter
Stream Protection Rule Letter to EPA 11 18 15.pdf

Mr. Ali,

I wanted to make sure you were aware of the attached letter relaying conservation groups' concerns about OSMRE's proposed Stream Protection Rule. It was sent to several people at EPA last week.

Please feel free to contact me with any questions.

Best,

Neil Gormley

Senior Associate Attorney

Earthjustice

1625 Massachusetts Ave., NW, Ste. 702

Washington, DC 20036

T: 202.797.5239

F: 202.667.2356

earthjustice.org



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From: Lisa Fuhrmann

Sent: Wednesday, November 18, 2015 2:32 PM

To: 'mccarthy.gina@epa.gov'; 'giles-Aa.cynthia@epa.gov'; 'Beauvais.joel@Epa.gov'

Cc: 'tejada.matthew@epa.gov'; 'garbow.avi@epa.gov'; Neil Gormley

Subject: Stream Protection Rule Letter

Dear Administrator McCarthy, Assistant Administrator Giles, and Acting Deputy Assistant Administrator Beauvais:

Attached please find a letter addressing the "Stream Protection Rule" proposed by the Office of Surface Mining Reclamation and Enforcement on July 27, 2015. In the letter, local and national conservation groups ask EPA to please consider their concerns as EPA works with OSMRE and decides whether to concur in the final rule under 30 U.S.C. § 1251(a)(B).

As stated in the letter, we would welcome the opportunity to discuss these concerns in person with you and your staff.

Sincerely,

Neil Gormley

Senior Associate Attorney

Earthjustice

1625 Massachusetts Ave., NW, Ste. 702

Washington, DC 20036

T: 202.797.5239

F: 202.667.2356

earthjustice.org

Lisa Fuhrmann

Litigation Assistant

Earthjustice Washington, D.C. Office

1625 Massachusetts Avenue, N.W., Suite 702

Washington, DC 20036-2243

T: 202.745.5215

F: 202.667.2356

earthjustice.org



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APPALACHIAN MOUNTAIN ADVOCATES ● PUBLIC JUSTICE
STATEWIDE ORGANIZING FOR COMMUNITY EMPOWERMENT
OHIO VALLEY ENVIRONMENTAL COALITION ● EARTH JUSTICE
KENTUCKY WATERWAYS ALLIANCE ● COAL RIVER MOUNTAIN WATCH
NATIONAL PARKS CONSERVATION ASSOCIATION
SOUTHERN APPALACHIAN MOUNTAIN STEWARDS
NATURAL RESOURCES DEFENSE COUNCIL ● APPALACHIAN VOICES
KENTUCKIANS FOR THE COMMONWEALTH
SOUTHERN ENVIRONMENTAL LAW CENTER

Via mail and e-mail November 18, 2015

Gina McCarthy, Administrator
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code: 1101A
Washington, DC 20460
McCarthy.gina@Epa.gov

Cynthia Giles, Assistant Administrator
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code: 2201A
Washington, DC 20460
Giles-Aa.cynthia@epa.gov

Joel Beauvais, Acting Deputy Assistant Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code: 4101M
Washington, DC 20460
Beauvais.joel@Epa.gov

**Re: EPA concurrence in the proposed Stream Protection Rule,
80 Fed. Reg. 44,436 (July 27, 2015)**

Dear Administrator McCarthy, Assistant Administrator Giles, and Acting Deputy Assistant Administrator Beauvais:

The Office of Surface Mining Reclamation and Enforcement (OSMRE) is currently considering public comments on the Stream Protection Rule, 80 Fed. Reg. 44,436 (July 27, 2015), a proposed overhaul of regulations implementing the Surface Mining Control and Reclamation Act (SMCRA). Under 30 U.S.C. § 1251(a)(B), EPA must provide written concurrence before OSMRE's proposed rule can be finalized. The undersigned groups write to urge EPA to first ensure that several key provisions of the Stream Protection Rule are strengthened.

In the words of President Obama's recent memorandum on mitigating impacts on natural resources, "[w]e all have a moral obligation to the next generation to leave America's natural

resources in better condition than when we inherited them.”¹ The surface coal mining industry is failing to live up to that moral obligation. As EPA has recognized, the practice of surface coal mining in Appalachia “stresses the natural environment and impacts the health and welfare of surrounding human communities. Streams once used for swimming, fishing, and drinking water have been adversely impacted, and groundwater resources used for drinking water have been contaminated.”² While the proposed Stream Protection Rule contains many beneficial provisions, in its current form the rule fails to adequately protect irreplaceable natural resources threatened by surface coal mining. We urge you to engage with OSMRE to ensure that the final rule is as protective as possible.

As recently detailed in comments submitted to OSMRE,³ local and national community and environmental groups strongly support several aspects of the proposed rule, but also have serious concerns about OSMRE’s approach, particularly as it relates to the ability of communities to protect their local water quality.

First and foremost, the rule should more clearly require mining operators to avoid causing or contributing to violations of water quality standards in receiving waters. It also should clarify that the requirement not to violate water quality standards is a SMCRA performance standard enforceable by citizens. As explained further below, EPA has an important role to play in explaining that SMCRA’s longstanding requirement not to violate water quality standards is independent of any obligations that operators have under the terms of a NPDES permit and is fully consistent with the Clean Water Act. EPA should explicitly affirm this principle in its written concurrence, and press OSMRE to do the same in the final rule preamble.

Relatedly, EPA should ensure that OSMRE gives effect to the legal requirement in SMCRA to avoid acid and toxic mine drainage; such drainage often violates water quality standards and criteria, and therefore avoidance is equally necessary to comply with the Clean Water Act.

EPA should urge OSMRE to maintain the 1983 stream buffer zone provision, an important component of the current standards that prohibits harmful mining activities within 100 feet of perennial and intermittent streams. OSMRE is poised to follow the Bush administration in replacing that highly protective provision with a vague and unenforceable requirement to “minimize” damaging activity near streams. OSMRE should reverse course, preserve the 1983 stream buffer zone, and ensure that it is adequately enforced to protect streams.

¹ Barack Obama, *Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment*, (Nov. 3, 2015), <https://www.whitehouse.gov/the-press-office/2015/11/03/mitigating-impacts-natural-resources-development-and-encouraging-related>, (“Presidential Memorandum”).

² Lisa Jackson et al., *Memorandum of Understanding Among the U.S. Department of the Army, U.S. Department of the Interior, and U.S. Environmental Protection Agency*, 1 (June 11, 2009), https://www.whitehouse.gov/assets/documents/2009-06-10_Final_MOU_Logos_Sigs.pdf.

³ The coalition’s comments are available through regulations.gov at docket number OSM-2010-0018-10413.

EPA should urge OSMRE not to allow the destruction of streams in reliance on an unrealistic stream restoration requirement. The proposed rule attempts to compensate for the loss of the strong 1983 stream buffer zone provision primarily through a new requirement for operators to restore streams destroyed by mining. EPA and other expert agencies, however, have long recognized that on-site stream restoration is extremely difficult, if not impossible, in the context of large-scale surface coal mining. The Stream Protection Rule should not allow the destruction of streams in reliance on an unrealistic restoration requirement, but the final rule must at least specify certain minimum elements for successful restoration of stream functions and require a robust showing that full restoration of stream functions is likely to be achieved *before* the natural stream is destroyed.

This set of rules and the proposed changes have serious environmental justice implications for Central Appalachia, a region already characterized by persistent poverty and an ongoing public health crisis that has been linked to surface coal mining by numerous peer-reviewed studies, as EPA has also recognized. As explained further below, OSMRE's analysis of the environmental justice consequences of its rulemaking is inadequate. We urge EPA to engage with OSMRE to better understand and disclose the consequences of this rulemaking for the communities of Central Appalachia and to better protect those communities from the multifarious harms of surface coal mining.

Water Quality Standards

It is absolutely crucial that the Stream Protection Rule retain the existing SMCRA requirement for coal mine operators to avoid causing or contributing to violations of water quality standards adopted under the Clean Water Act. Existing section 816.42 requires compliance with "applicable water quality laws and regulations," and OSMRE proposes to include equivalent language in the Stream Protection Rule. 80 Fed. Reg. at 44,549, 44,652. But the final rule must go further and again make clear that this regulatory language includes water quality standards adopted under the Clean Water Act, just as OSMRE did when it first adopted this language in 1982. 47 Fed. Reg. 47,216, 47,220 (Oct. 22, 1982) ("discharges must comply with all State and Federal water quality laws and regulations. This includes applicable water quality standards.").

The final rule preamble should also clarify that this rule creates a performance standard that makes water quality standards directly enforceable under SMCRA. In a recent citizen suit seeking to enforce § 816.42 and its state program counterpart, a coal company argued that those standards are not enforceable under SMCRA, and that so long as the company complied with its NPDES effluent limitations, it was shielded from complying with water quality standards under both the Clean Water Act and SMCRA.⁴ The company argued that the language in § 816.42 supported its interpretation because when OSMRE referred to the "applicable" standards of the Clean Water Act, OSMRE effectively incorporated the Clean Water Act permit shield and all Clean-Water-Act-based prerequisites to enforcing Clean Water Act-based standards under SMCRA. *Id.* The district court in that case found that it did not need to address that argument, because the company's NPDES permit required compliance with water quality standards, and

⁴ *Ohio Valley Envtl. Coal. v. Fola Coal Co., LLC*, Civil No. 2:13-21588, (S.D. W. Va.), Def.'s Reply In Supp. of Its Mot. for Summ. J., 15 (Apr. 23, 2015), ECF No. 78.

that permit condition was enforceable by citizens under the Clean Water Act.⁵ However, West Virginia has sought to eliminate that NPDES permit condition, which could make the SMCRA requirement an essential backstop to enforce water quality standards. EPA should affirm in its concurrence letter that the existence of such a backstop under SMCRA is fully consistent with the Clean Water Act.

The final rule should clarify that the word “applicable” in § 816.42 means all EPA-approved standards that are applicable to the receiving waters for the proposed operation. It cannot mean only the subset of water quality standards for which specific numerical effluent limitations are included in a NPDES permit. Such an interpretation would effectively establish less stringent water quality standards for waters affected by coal mining operations, enabling operators to violate narrative water quality standards under SMCRA, as long as they comply with the numerical effluent limitations in NPDES permits. Water quality standards are the “floor” of federally required compliance under the Clean Water Act, and States “may not set standards that are less stringent than the [Clean Water Act’s].” *Dubois v. U.S. Dep’t. of Agric.*, 102 F.3d 1273, 1300 (1st Cir. 1996). *See also In re Entergy Nuclear Vt. Yankee Discharge Permit 3-1199*, 187 Vt. 142, 167-68 (2009) (“Federal requirements for the content of state water quality standards represent a floor”). Thus, water quality standards provide the “floor” for compliance in state programs under both the Clean Water Act and SMCRA.

EPA should also urge OSMRE to include protection of water quality standards within the final rule’s definition of material damage, by adding a new subparagraph (c) to § 701.5 that provides, (c) *Exceed applicable State or Federal water quality standards or criteria, including applicable State groundwater quality standards.*. The proposed rule’s definition fails to capture adverse hydrological impacts, such as widespread impairment of water quality, and is therefore inconsistent with the Clean Water Act.

The language of the proposed material damage definition should also be revised to adopt an approach to protecting designated uses that is more consistent with the Clean Water Act. The proposed definition includes discharges that “preclude” a designated use. 80 Fed. Reg. at 44,599. But neither the Clean Water Act nor its implementing regulations are framed in terms of “preclusion.” Rather, designated uses are themselves components of a state’s water quality standards, while specific water quality standards (“water quality criteria”) are designed to provide the level of protection needed to support those designated uses. 33 U.S.C. § 1313(c)(2)(A). EPA also uses a different standard than “preclusion” in the section of its Water Quality Standards Handbook dealing with protection of existing uses. The Handbook states that maintenance and protection of existing uses is “the absolute floor of water quality in all waters of the United States.” Handbook, § 4.4, EPA 823-B-94-005a (Aug. 1994). “If a planned activity will foreseeably lower water quality to the extent that it no longer is sufficient to protect and maintain the existing uses in that water body, such an activity is inconsistent with EPA’s antidegradation policy, which requires that existing uses are to be maintained.” *Id.*

The ordinary meaning of “preclude” is to prevent something from happening or make it impossible to happen. By that standard, it could be difficult to demonstrate that “material damage” is likely or has occurred unless it can be proven that an operation renders the designated

⁵ *Id.*, Mem. Op., 12 n. 3, ECF No. 94.

use *impossible* by, for example, making it impossible for any fish or other aquatic life to propagate in a stream. If so, that standard would be less stringent than applicable water quality standards, and would therefore be inconsistent with the Clean Water Act's mandate to maintain and protect each existing use. *See, e.g.*, 33 U.S.C. § 1251(a).

In its Water Quality Handbook, EPA stated that for aquatic life/wildlife uses: "No activity is allowable under the antidegradation policy which would ***partially or completely eliminate*** any existing use whether or not that use is designated in a State's water quality standards." Handbook, § 4.4.2 (emphasis added). In addition, EPA states that physical modifications to a waterbody cannot result in "significant degradation" to the aquatic ecosystem. *Id.* § 4.4.3. To be consistent with the Clean Water Act, then, OSMRE should replace the word "preclude" with *partially or completely eliminate or significantly degrade*. This would make the rule consistent not only with federal anti-degradation rules under the Clean Water Act, 40 C.F.R. § 131.12(a)(1), but also with the standard for listing streams as impaired under § 303(d)(1)(A), which requires states to identify waters which "are not stringent enough to implement any water quality standard applicable to such waters." 33 U.S.C. § 1313(d)(1)(A). That language similarly requires states to maintain and protect existing water quality standards and uses.

EPA should also ensure that OSMRE clarifies the requirement for operations that mine through or dispose of waste in streams to comply with water quality standards. Proposed Section 816.71(a)(7) states that excess spoil must be placed "in a manner" that will "[e]nsure that the fill will not cause or contribute to an exceedance of any applicable water quality standards." 80 Fed. Reg. at 44,556, 44,661. The final rule should strengthen this language by making proposed 816.71(a)(7) into a separate paragraph (b) that cannot be interpreted to be limited to defects in the "manner" of placement of spoil: *You must ensure that excess spoil placement does not cause or contribute to an exceedance of water quality standards*. The final rule should also clarify that the same requirement applies as an enforceable performance standard when operators mine through or divert streams. OSMRE should add language to proposed Section 816.57(b) providing, *You must ensure that activities within the buffer zone do not cause or contribute to an exceedance of water quality standards*.

In order to ensure the enforceability of all of these provisions, EPA and OSMRE should jointly explain that the longstanding SMCRA requirement to comply with water quality standards is consistent with the savings clause in Section 702(a) of SMCRA, which provides that "[n]othing in this Act shall be construed as superseding, amending, modifying, or repealing" the Clean Water Act, any rule or regulation adopted under the Clean Water Act, or any state laws enacted pursuant to the Clean Water Act. 30 U.S.C. § 1292(a). OSMRE mentions this provision several times in the proposed rule, but not in the context of § 816.42's requirement to comply with water quality standards. Because EPA is the lead expert agency in administration of the Clean Water Act, EPA should articulate in its written concurrence its legal opinion that the SMCRA requirement to comply with water quality standards is fully consistent with the Clean Water Act. And EPA should encourage OSMRE to affirm the same conclusion in its final rule preamble.

The coal industry has relied on the SMCRA savings clause to argue that existing § 816.42 is unenforceable in situations where there is no directly enforceable Clean Water Act requirement to comply with water quality standards. In that situation, it argues that § 816.42 is

more stringent than the Clean Water Act and is therefore negated by the savings clause. The Sixth Circuit recently addressed this argument and reached that conclusion. *Sierra Club v. ICG Hazard, LLC*, 781 F.3d 281, 291 (6th Cir. 2015) (“To hold, in connection with the very same selenium discharges, that ICG is in compliance with Kentucky water quality-based effluent limitations for purposes of the Clean Water Act but in violation of those same water quality standards under the Surface Mining Act would create an inconsistency or conflict in regulatory practice, in direct contravention of § 702(a)(3) [30 U.S.C. § 1292(a)(3)].”). As we explain below, we believe that this case is wrongly decided. Unless the agencies charged with administering SMCRA and the Clean Water Act address and clarify this issue, courts may hold that the proposed § 816.42(a) is also made inoperative by the savings clause.

If that occurred, the stream impairment caused by mining discharges could be irreparable. West Virginia has never established any effluent limitations for any ionic chemicals in NPDES mining permits, and it has given no indication that it ever will— notwithstanding the fact that every permit that it issues for a large-scale surface mine with valley fills will likely cause biological impairment and violations of narrative water quality standards. The evidence of the West Virginia Department of Environmental Protection’s (WVDEP’s) concerted efforts to avoid the implementation of narrative water quality standards is pervasive. WVDEP successfully appealed a ruling by the state’s Environmental Quality Board, which required WVDEP to conduct a reasonable potential analysis and to include appropriate NPDES permit limits for the New Hill West Surface Mine. *Sierra Club v. Patriot Min. Co.*, 2014 WL 2404299 (W. Va. 2014). It unsuccessfully sued to overturn EPA’s Benchmark. *National Mining Ass’n v. McCarthy*, 758 F.3d 243 (D.C. Cir. 2014). It refused to identify conductivity as a cause of biological impairment in any impaired stream on its 303(d) list. It refused to adopt any total maximum daily load standards relating to ionic chemicals or conductivity. It refused to apply its stream assessment methodology to biological impairment due to conductivity. As the court stated in *Ohio Valley Environmental Coalition v. Elk Run Coal Co., Inc.*, this is an “abdication of responsibility by the WVDEP.” 24 F. Supp. 3d 532, 549 (S.D. W. Va. 2014). “To credit the WVDEP’s current position that there is no methodology for assessing West Virginia’s biological narrative water quality standards . . . —leading to no enforcement whatsoever—would be to . . . fail to enforce the [Clean Water Act].” *Id.* Additionally, West Virginia recently enacted two statutes that seek to undermine and evade two federal court rulings that, in reliance on EPA’s own decisions, found that mines are violating its narrative water quality standards.

West Virginia is engaged in a deliberate and sustained effort to prevent enforcement of federally enforceable water quality standards because it wants to protect the mining industry while escaping both citizen enforcement and EPA oversight. EPA and OSMRE must not allow this to happen. Your agency should join OSMRE to clarify that § 816.42 imposes an independent requirement to comply with water quality standards, and that this requirement is consistent with the Clean Water Act, even if state-issued NPDES permits do not contain a condition requiring compliance with water quality standards. Water quality standards provide the “floor” for compliance with the Clean Water Act. 33 U.S.C. § 1311(b)(1)(C); *see also* 40 C.F.R. § 122.1(a)(5) (stating that nothing in EPA’s NPDES regulations “precludes more stringent State regulation of any activity covered by” those regulations, “whether or not under an approved Stated [NPDES] program”). Since water quality standards provide the “floor” for compliance under the Clean Water Act, a SMCRA rule requiring compliance with those standards is consistent with the Clean Water Act and SMCRA’s savings clause.

Three decades ago, EPA and OSMRE reached this same conclusion through the concurrence procedure of 30 U.S.C. § 1251(a)(B), enacted by Congress to avoid conflicts between air or water quality standards. *See* H. Rep. No. 95-218, at 142 (1977). When OSMRE issued § 816.42 in 1982, EPA expressly “concurred in the issuance of this regulation.” 47 Fed. Reg. 47,216, 47,221. Further, EPA concurred in OSMRE’s approval of West Virginia’s delegated SMCRA program after OSMRE specifically directed West Virginia to “requir[e] that all water leaving the permit area meet Federal and State water quality statutes, regulations, standards or effluent limitations.” 47 Fed. Reg. 20,119, 20,122 (May 11, 1982); 47 Fed. Reg. 39,821 (Sept. 10, 1982) (OSMRE approval of that portion of West Virginia’s program); *id.* at 39,822 (EPA concurrence). Thus, both EPA and OSMRE have previously found that a requirement to comply with water quality standards is consistent with the Clean Water Act and does not violate the savings clause. OSMRE has also stated that “Congress intended that surface coal mining and reclamation operation should not proceed unless all applicable water quality standards are achieved and maintained.” 44 Fed. Reg. 14,902, 14,927/1 (Mar. 13, 1979). EPA should therefore join OSMRE to confirm in the final rule that SMCRA’s savings clause allows direct enforcement of water quality standards under SMCRA.

Acid and Toxic Mine Drainage

In proposed § 816.38, OSMRE would require permittees to “use the best technology currently available to handle acid-forming and toxic-forming materials in a manner that will avoid the creation of acid or toxic mine drainage into surface water and groundwater.” 80 Fed. Reg. at 44,651. This provision should be revised to better protect water quality, including water quality standards for toxic pollutants, and to better implement the avoidance requirement in § 515(b)(10) of SMCRA. 30 U.S.C. § 1265(b)(10). As proposed, this provision does not fully carry out § 515(b)(10) because it might be interpreted, contrary to the statute, to require avoidance only to the extent that the permittee must “use the best available technology.” The statute does not condition avoidance in that manner, and instead requires avoidance unconditionally. That is the holding in *Rith Energy, Inc. v. OSM*, 111 IBLA 239 (Oct. 24 1989). As OSM acknowledges, that case “upheld OSM[RE]’s refusal to approve a mining plan that sought to minimize, rather than avoid, [acid mine drainage].” 80 Fed. Reg. at 44,479. In that case, the Interior Board of Land Appeals (IBLA) agreed with OSMRE that “the statute, as properly read, requires the agency to minimize disturbance to the prevailing hydrologic balance by avoiding acid or toxic mine drainage. Minimizing the contact of water and toxic-producing deposits, as argued by petitioner [Rith Energy], is not the standard.” 111 IBLA at 249.

By referencing an obligation to use best available technology in the language of the proposed regulation, however, OSMRE risks repeating the error the IBLA rejected in *Rith*—namely, setting an illegal standard based on minimization rather than avoidance. Requiring use of the best available technology is effectively the same as requiring only minimization, because that technology as a practical matter may not achieve complete avoidance. That result is prohibited by SMCRA and would also undermine water quality standards under the Clean Water Act. Acid or toxic mine drainage often violates numerical water quality standards for pollutants like pH, iron, manganese and selenium and narrative water quality standards for biological integrity. Thus, avoiding such drainage is necessary to comply with the Clean Water Act.

EPA should therefore ensure that OSMRE clarifies the avoidance requirement by modifying section 816.38 to read: *You, the permittee, must handle acid-forming and toxic-forming materials in a manner that will avoid the creation of acid or toxic mine drainage into surface water and groundwater.* To fully carry out this requirement to protect water quality, EPA should also urge OSMRE to add a new subparagraph (3) to section 773.15(n) as follows: *The proposed operation will minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas by avoiding the creation of acid or toxic mine drainage into surface water and groundwater.*

Stream Buffer Zone

The proposed rule weakens the protection of streams by repealing the 1983 stream buffer zone provision, a regulation that currently prohibits harmful mining activities within 100 feet of perennial and intermittent streams. *Compare* current 30 C.F.R. § 816.57 (prohibiting mining disturbance within 100 feet of a stream unless the authority determines that activities within the buffer zone “will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream.”) *with* proposed 30 C.F.R. §§ 816.57 & 780.28 (which do not contain that requirement). EPA should urge OSMRE to restore this highly protective provision in the final rule.

OSMRE first adopted a buffer zone regulation in 1977, and then strengthened it in 1979, stating that the regulation’s main objective was to “protect[] stream channels.” 43 Fed. Reg. 41,662, 41,752/2 (Sept. 18, 1978). OSMRE reaffirmed the stream buffer zone regulation in 1983, reasoning that “[s]treams are ... often valuable fish and biological habitats,” and explaining that the regulation would protect against “gross disturbance of stream channels caused by surface coal mining[.]” 48 Fed. Reg. 30,312, 30,312 (June 30, 1983). In 2001, the U.S. government’s brief in the *Bragg* litigation reiterated that, under the stream buffer zone regulation, activities that “disturb intermittent or perennial streams may be approved only if there is a finding that activity will not adversely affect the environmental resources of the filled stream segment.”⁶

A 2008 rulemaking repealed the bright-line stream buffer zone regulation, replacing the flat prohibition on adverse effects to water quantity, water quality, or other environmental resources from activity within the buffer zone with a requirement to “minimize” harm. 73 Fed. Reg. 75,814, 75,824/3-75,825/1, 75,877 (former 30 C.F.R. § 780.28(d)), 75,883 (former 30 C.F.R. § 816.57(a)(1)) (Dec. 12, 2008). Conservation groups and Appalachian community groups, including many of the undersigned organizations, challenged the 2008 rule in court. The U.S. District Court for the District of Columbia determined that the 2008 rule violated the Endangered Species Act, and thus the court vacated the 2008 rule, and reinstated the more protective 1983 stream buffer zone regulation. *National Parks Conservation Ass’n v. Jewell*, 62 F. Supp. 3d 7, 15-22 (D.D.C. 2014).

OSMRE is now poised to follow the Bush administration and replace the highly protective 1983 provision with a vague and unenforceable requirement to “minimize” damaging

⁶ *Bragg v. W. Va. Coal Ass’n*, 248 F.3d 275 (4th Cir. 2001) (No. 99-2683), Br. for the Federal Appellants at 41.

activity near streams. EPA should urge OSMRE to reverse course and preserve the 1983 rule. OSMRE is already implementing the reinstated 1983 stream buffer zone regulation in Tennessee, where it administers SMCRA directly. OSMRE has also used SMCRA's ten-day notice oversight provision to ensure that state permitting authorities are adhering to the regulation.⁷ Compliance with the stream buffer zone regulation remains uneven, and greater oversight is required. But abandoning this longstanding protection would be an enormous step backwards, and a cruel blow to communities across Appalachia that need greater protection from surface coal mining. If the administration indeed intends the Stream Protection Rule to protect streams and the environment from destructive and irresponsible mining practices, it should be working to improve enforcement of the current stream buffer zone regulation, not following the Bush administration in weakening this important protection.

Deciding to preserve the stream buffer zone regulation would be more consistent with the President's recent memorandum on mitigating impacts on natural resources. In the November 3 memorandum, the President instructs that natural resource agencies, including the Department of Interior and EPA, should generally choose avoidance of harm to natural resources over minimization and restoration. Presidential Memorandum ("It shall be the policy of the Departments . . . the Interior [and EPA] to avoid and then minimize harmful effects to land, water, wildlife, and other ecological resources.") ("avoidance, minimization, and compensation . . . are generally applied sequentially"). Under the memorandum, the preference for avoidance of harm is particularly strong when the natural resource, "because of [its] high value or function and unique character, cannot be restored or replaced." Both EPA and the Department of Interior have already recognized this to be true of Appalachian headwater streams.⁸ The choice to authorize the destruction of highly valuable streams in reliance on restoration approaches proven to be unsuccessful would run counter to Presidential policy, which calls for prioritizing avoidance of this damage.

Stream Restoration

Instead of protecting streams from damage, OSMRE's proposed rule requires permittees to restore the hydrological form and ecological function of mined-through stream segments. 80 Fed. Reg. at 44,440. We strongly support the principle that mining companies should be required to fix the damage that they cause, but the proposed rule depends on the unsubstantiated assumption that true restoration of ecological function is possible on a mine site using available and proven techniques of stream restoration and creation.

⁷ OSMRE's oversight activities under 30 U.S.C. § 1271(a) with respect to the buffer zone have so far been insufficient to spur better compliance by state regulatory authorities.

⁸ EPA, *Spruce No. 1 Mine Final Determination*, 8 (2011) ("The peer-reviewed literature now reflect a growing consensus of the importance of headwater streams[.]"); 48 Fed. Reg. 30,312, 30,313 (June 30, 1983) (adopting a highly protective stream buffer zone regulation to protect the "significant environmental-resource value" of perennial and intermittent streams). See also *Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 567 F.3d 130, 134 (4th Cir. 2009) (Michael, J., dissenting from denial of reh'g en banc) (citing Army Corps of Engineers permit decision for the Black Castle mountaintop removal mine) ("[i]t is well understood that the health of entire watersheds [is] dependent on functions provided by headwater streams.").

EPA has recognized that the science does not support this assumption: “[t]here is no evidence in the peer-reviewed literature that the type of stream creation included in [the usual surface mining project proposal] will successfully replace lost biological function and comparable stream chemistry to high quality stream resources.” EPA, *Spruce No. 1 Mine Final Determination*, 85 (2011). In the final determination for the Spruce No. 1 mine, EPA stated:

Scientific research has demonstrated that replacement of streams is among the most difficult and frequently unsuccessful forms of mitigation. Even if stream structure and hydrology can be replaced, it is not clear that replacing structure and hydrology will result in true replacement of functions, especially the native aquatic community and headwater functions.

Id., (internal citation omitted). The Fish and Wildlife Service has agreed with EPA that the science is not there to support stream creation proposals. *Id.* at 84 (summarizing comments of the Fish and Wildlife Service).

As EPA has further recognized, “recent research has shown that stream restoration projects based upon channel design ... **are not effective** in restoring ecological function and biodiversity.” *Id.*, 20 (emphasis added). A recent peer-reviewed study synthesized information from 434 stream mitigation projects from 117 permits for surface mining in Appalachia.⁹ That study analyzed both stream restoration and stream creation projects and concluded that “the data show that mitigation efforts being implemented in southern Appalachia for coal mining are not meeting the objectives of the Clean Water Act to replace lost or degraded streams ecosystems and their functions.” *Id.* at 10,552. In fact, “97% of the projects reported suboptimal or marginal habitat even after 5 years of monitoring.” *Id.* Even after 30 years, research has shown that ecological function remains impaired.¹⁰

The Stream Protection Rule also assumes that constructing new stream channels is just as feasible as restoring existing stream channels. 80 Fed. Reg. at 44,440. OSMRE relies on a single vague sentence in a 2012 EPA report that “restoration of high-gradient, very small intermittent and ephemeral channels as part of stream mitigation projects is common in coalmining regions.” *Id.*, n. 18 (citing Harman et al., *A Function-Based Framework for Stream Assessment and Restoration Projects*, EPA, May 2012, at 230). That study provides no support or citation for that statement, nor was the study designed to examine the success or effectiveness of stream restoration. The 2014 Palmer study shows that while these attempts at stream restoration may be common, they are often unsuccessful. OSMRE then extrapolates from that one vague sentence about stream restoration the conclusion that constructing new stream channels should be just as feasible, and cites Appendix B of that same study. 80 Fed. Reg. at 44,440, n. 19. However, Appendix B describes a completely hypothetical stream reconstruction scenario, with no reference to actual on-the-ground results. Harman et al. at 336-40. Thus, the one and only study OSMRE cites provides no factual or scientific basis to support OSMRE’s conclusion about the feasibility of new stream creation.

⁹ Margaret A. Palmer & Kelly L. Hondula, *Restoration as Mitigation: Analysis of Stream Mitigation for Coal Mining Impacts in Southern Appalachia*, Environ. Sci. Technol. 48: 10,552-60 (2014).

¹⁰ Gregory J. Pond, et al., *Long-Term Impacts on Macroinvertebrates Downstream of Reclaimed Mountaintop Mining Valley Fills in Central Appalachia*, Vol. 54: 4 Envtl. Mgmt. 919, 919 (2014).

The current state of the science on stream creation is summarized in the 2014 Palmer study cited above:

There have only been a few studies that include an assessment of the effectiveness of stream creation. One of these examined two projects in North Carolina (U.S.) and based success on whether or not projects met regulatory success criteria at the time of construction; both met regulatory requirements however authors were not able to evaluate ecological status with such a small sample size. Another study evaluated five creation projects on reclaimed mine land in [West Virginia] and concluded that using ecological standards, created streams on mine land do not mimic natural streams. A third study reported that created streams do not produce biological outcomes comparable to unimpacted reference streams. Similar conclusions of inadequacy have been reached for channels constructed in other geographical regions. Currently, there are no scientifically validated methods for constructing a stream in an area that did not formerly have one and the feasibility of doing this has been challenged by the scientific community and the Corps and EPA who discourage stream creation in the 2008 [Mitigation R]ule.

Palmer & Hondula at 10,556 (internal footnotes omitted).

Mingo Logan's Mountain Laurel Mining Complex in West Virginia is a recent example of the failure of stream creation. Mingo Logan was required to construct two temporary stream channels to offset stream losses from filling Seng Creek to build a coal preparation plant. Neither constructed channel will hold water, and Mingo Logan admitted in its 2014 annual monitoring report to the Corps that "[i]t is doubtful that the temporary mitigation in the clear water ditches as they currently exist will ever be able to meet the success criteria proposed in the approved Compensatory Mitigation Plan." Mingo Logan Coal Co., *Annual Update and Status Report*, p. 3 (Nov. 2014).

The failure to demonstrate the feasibility of restoring or re-creating mined streams means that the proposed Stream Protection Rule cannot achieve its announced goal of preventing long-term environmental harm to streams. In the absence of proven remedies to prevent or mitigate direct stream damage, the proper course is to prevent stream destruction in the first place by restoring and enforcing a protective stream buffer zone rule.¹¹ In addition, EPA must ensure that OSMRE tightens the requirements of the proposed rule with respect to restoration of stream form and function so that operators are not authorized to damage streams without solid evidence that restoration is truly feasible. As the recent Presidential Memorandum declares, "Agencies should set measurable performance standards at the project **and program level** to assess whether mitigation is effective" (emphasis added). The proposed Stream Protection Rule provides for state regulatory authorities to set performance standards for particular projects, but fails to establish measurable performance standards for stream restoration activities "at the program level."

¹¹ See Presidential Memorandum (explaining that minimization and compensation measures "may not be adequate or appropriate" for resources of irreplaceable character).

EPA should encourage OSMRE to follow the 2008 Mitigation Regulations and define restoration of ecological function to include, at a minimum, the restoration of the physical, chemical, and biological functions of the pre-mining stream. 33 C.F.R. § 332.2. The final rule also must clarify in § 780.28 that the regulatory authority cannot issue a permit in the first place without making a well-supported determination that these form and function restoration requirements will be met.

Environmental Justice

OSMRE's draft Environmental Impact Statement (DEIS) for the rule acknowledges that areas of Appalachia where surface coal mining is prevalent are disproportionately low-income. "[O]f the 286 counties in the study area, 11 counties have a percent of the population living below the poverty line that is at least twice that of the statewide average." DEIS at 4-323 (July 2015). "[T]en are located in the Appalachian Basin region, five in Kentucky, four in Virginia, and one in Ohio." *Id.* In total, OSMRE identifies 22 affected Appalachian counties that meet its specified environmental justice thresholds. "[N]ine have been identified as low-income environmental justice communities, 12 as minority communities, and one as both." *Id.* at 4-326.

OSMRE's analysis does not recognize or consider additional factors that should also be considered in assessing environmental justice concerns, *e.g.*, education levels, baseline health levels (*e.g.*, early mortality, low birth weight), access to health care, food assistance levels in schools, and the levels of existing environmental degradation from the cumulative harm that past mining has already caused in these communities. For additional information, OSMRE should consult and use both EPA's EJSCREEN, and California's EnviroScreen 2.0, and consider all factors they contain, to assess environmental justice and environmental health burdens and disparities.¹²

OSMRE's environmental justice analysis also fails to acknowledge or appreciate what is at stake for these communities, much less fulfill the 1995 Executive Order's directive to advance environmental justice when exercising federal statutory authority.¹³ The discussion blandly asserts that all of the alternatives will have "beneficial or negligible" environmental effects, and health impacts ranging from "Negligible to Major Beneficial." DEIS at 4-328-29. It fails to assess which of the several alternatives would provide the greatest value in terms of environmental justice to reduce the impacts and risks to public health and environmental resources on which local low-income communities depend for clean water, recreation, subsistence, cultural practices and traditions, sustainable tourism, and other ecologically consistent uses. And in addition to the failure to compare and contrast the several alternatives in any detail, the analysis unacceptably glosses over the fact that "negligible" improvement in health and environmental conditions means allowing unacceptable devastation and injustice to continue unchecked.

¹² See EPA, *EJSCREEN: Environmental Justice Screening and Mapping Tool*, United States Environmental Protection Agency (Sept. 16, 2015), <http://www2.epa.gov/ejscreen>; CalEnviroScreen 2.0, <http://oehha.ca.gov/ej/ces2.html>.

¹³ *Federal Actions to Address Environmental Justice*, Exec. Order No. 12898, 3 C.F.R. § 859 (1995), reprinted as amended in 42 U.S.C. § 4321 (1998).

Scientific studies of people in the coal-producing areas of Appalachia, where overall mortality rates are about 20 percent higher than the national average, have reported evidence linking the practice of surface coal mining with elevated rates of serious health problems—including cancer, kidney disease, birth defects, cardiovascular disease, and pulmonary disease.¹⁴ OSMRE recently acknowledged the weighty scientific evidence that surface coal mining is causing disease and death in Appalachia.¹⁵ In light of that acknowledgment, there is no justification for OSMRE to fail to consider the public health consequences of its decision. Likewise, EPA’s final determination on the Spruce No. 1 Mine cited nine studies linking mountaintop removal mining and public health impacts. In its final determination, EPA acknowledged that “[a] growing body of research suggests that health disparities are not uniformly distributed across the Appalachian region, but instead are concentrated in areas where surface coal mining activity takes place (Hendryx et al. 2007, 2008, Hendryx 2008, Hitt and Hendryx 2010, Hendryx and Zullig 2009).”¹⁶ EPA’s 2011 Guidance cited some of these studies, as well as an additional study that examined the association between mountaintop removal mining and birth defects.¹⁷

In addition, the harm that removal of the stream buffer zone and inadequate water quality protection, among other problems described above, would cause to natural resources would fall unfairly and disproportionately on low-income communities in Appalachia. A Stream Protection Rule that condones continued significant disproportionate harm fails the test of environmental justice.

Furthermore, surface coal mining actually costs the economy of Appalachia more than it provides, even putting aside these massive health costs. Claims about the economic benefits of coal mining—including OSMRE’s—ignore the expenditures used to subsidize coal consumption and cover costs that are externalized by the industry. For example, in Kentucky this includes an estimated

\$239 million to address the industry’s impact on the coal haul road system as well as expenditures to regulate the environmental and health and safety impacts of coal, support coal worker training, conduct research and development for the coal industry, promote education about coal in the public schools and support the residents directly and indirectly employed by coal [and] \$85 million in tax expenditures designed to subsidize the mining and burning of coal.¹⁸

¹⁴ See Michael Hendryx, *Summaries of articles showing public health consequences of Appalachian coal mining*, 2 (Aug. 2012), available through regulations.gov at docket OSM-2010-0018-10413, attachment 28.

¹⁵ Washington Times via Associated Press, *Officials want mining health effects to be closely studied*, (June 6, 2015), <http://www.washingtontimes.com/news/2015/jun/6/officials-want-mining-health-effects-to-be-closely/>.

¹⁶ EPA, *Final Determination*, at 96.

¹⁷ EPA, *Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order*, at 4 (2011).

¹⁸ Melissa Fry Konty and Jason Bailey, *The Impact of Coal on the Kentucky State Budget*, Mountain Association for Community Economic Development, 2 (June 25, 2009).

As a result the coal mining industry has a negative net impact on Kentucky's economy: in just one year (Fiscal Year 2006), the total net impact of the coal industry on the state's budget amounted to a net cost to the state of nearly \$115 million.¹⁹

A similar report for West Virginia estimated that the net cost of the coal industry to the West Virginia state budget for Fiscal Year 2009 was \$97.5 million.²⁰ For Virginia, the net cost to the state for Fiscal Year 2009 was about \$21.9 million.²¹ And in Tennessee, the net cost to the state budget for Fiscal Year 2009 was about \$2 million.²² This money spent propping up the coal mining industry represents a loss to the public interest in supporting public infrastructure, health, and education, and a lost opportunity to achieve greater economic diversification.

EPA should work with OSMRE to develop a more robust environmental justice analysis that discloses the true cost to Appalachia of OSMRE's decision to allow large-scale surface coal mining to continue. EPA should also ensure that the final rule does not allow disproportionate environmental harm to occur to Appalachian low-income communities, when this would be inconsistent with the Clean Water Act and SMCRA (as described above), and inconsistent with the 1995 Executive Order and EPA's own existing Plan EJ2014 and guidance on environmental justice in rulemaking and permitting. Administrator McCarthy has committed to make a "visible difference in communities." EPA's decision on this rule will be an important way to realize that commitment.

We would welcome the opportunity to discuss these concerns in person with you and your staff.

Sincerely,

/s/ Neil Gormley

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¹⁹ *Id.* at 1.

²⁰ Rory McIlmoil et al., *Coal and Renewables in Central Appalachia: The Impact of Coal on the West Virginia State Budget*, Downstream Strategies and West Virginia Center on Budget and Policy, xi (June 22, 2010).

²¹ Rory McIlmoil et al., *The Impact of Coal on the Virginia State Budget*, Downstream Strategies, xi (Dec. 12, 2012).

²² Rory McIlmoil et al., *The Impact of Coal on the Tennessee State Budget*, Downstream Strategies and West Virginia Center on Budget and Policy, xi (June 22, 2010).

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From: King, Marva
Sent: Tue 9/29/2015 4:44:25 PM
Subject: FW: [epa-ej] Invitation to Important Stakeholder Briefing on Refinery Emissions Standards

FYI

From: Environmental Justice EPA [mailto:environmental-justice@epa.gov]
Sent: Tuesday, September 29, 2015 12:21 PM
To: Environmental Justice information
Subject: [epa-ej] Invitation to Important Stakeholder Briefing on Refinery Emissions Standards

Invitation to Important Stakeholder Briefing on Refinery Emissions Standards

Dear Friend:

Today, September 29 at 5:00 p.m. EDT, EPA will discuss and take questions on updates to emissions standards for petroleum refineries aimed at protecting public health, improving air quality and protecting communities.

The updated air pollution standards will further control toxic air emissions from petroleum refineries. Exposure to toxic air pollutants, such as benzene, can cause respiratory problems and other serious health issues, and can increase the risk of developing cancer. This rule will, for the first time ever, provide important information about refinery emissions to the public and neighboring communities by requiring refineries to monitor emissions at their fence lines.

We invite you to join today's Refinery Emissions Standards Announcement Teleconference where you will have the opportunity to ask questions of senior officials about this action and its public health implications.

To ensure your participation, please dial in 15 minutes prior to the start of the call. Details of the call can be found below:

When: Tuesday September 29, 2015

Time: 5:00 p.m. Eastern Time

Participant Dial-in Number: [Ex. 6 - Personal Privacy]

Conference ID Number: [Ex. 6 - Personal Privacy]

We encourage your participation and please extend this invite to your organization's leadership.

Additional information can be found on our website: <http://www3.epa.gov/ttn/atw/petref.html>

00711

If you are not already a member, the Office of Environmental Justice would like to invite you to join the EJ ListServ. The purpose of this information tool is to notify individuals about activities at EPA in the field of environmental justice. By subscribing to this list you will receive information on EPA's activities, programs, projects grants and about environmental justice activities at other agencies. Noteworthy news items, National meeting announcements, meeting summaries of NEJAC meetings, and new publication notices will also be distributed. Postings can only be made by the Office of Environmental Justice. To request an item to be posted, send your information to environmental-justice@epa.gov and indicate in the subject "Post to EPA-EJ ListServ"

To join the listserv go to: https://lists.epa.gov/read/all_forums/subscribe?name=epa-ej

To change the way you receive these emails, go to: <https://lists.epa.gov/read/?forum=epa-ej> and click "My Account."

To unsubscribe, send a blank email to leave-1568584-864604.57dfc42510755007256961da55fc518f@lists.epa.gov.

To: Eley, Carlton[Eley.Carlton@epa.gov]
Cc: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Dean Hubbard
Sent: Thur 2/25/2016 5:59:48 PM
Subject: Re: FW: Building Trades Question

Carlton,

Thanks for following up so quickly. Looking forward to working with you on this. My guess is that the architects for the most part engage with the contractors, who are the link to the building trades. If NOMA is more comfortable engaging with the trades through a (minority) contractor organization, we could start there. A lot of the trades have very good solar, wind and RE training as part of their multi-year apprenticeships, that are usually jointly funded by trades and contractor organizations.

Dean

K. Dean Hubbard, Jr.
Director, Sierra Club Labor and Economic Justice Program
203-216-2262
<http://www.sierraclub.org/labor-program>

The Sierra Club is fighting for a worker-friendly clean energy economy. Help us make it happen [here](#).

On Tue, Feb 23, 2016 at 2:29 PM, Eley, Carlton <Eley.Carlton@epa.gov> wrote:

Hi Dean,

I did follow up with NOMA. I contacted NOMA's past National President.

She shared the email with NOMA current National President and President-elect.

- Kevin Holland - President
- Bryan Hudson - President-elect

No response yet. I will keep you posted.

Carlton

From: Eley, Carlton
Sent: Monday, February 22, 2016 12:32 PM
To: 'Kathy Dixon' <kdixon@kdixonarchitecture.com>
Subject: Building Trades Question

Hi Kathy,

This morning I was in a meeting with the Sierra Club. One of the participants was K. Dean Hubbard, Jr. He's the Director of the Labor Program at the Sierra Club.

During the meeting, Dean referenced a number of efforts involving the Sierra Club, including **apprenticeships for entry into the building trades**. I asked Dean whom

the Sierra Club is working with, and he mentioned: Pipefitters; Brick layers; Plumbers; IBW (union); and AFLCIO.

Realizing those groups are at one end of the building trades profession, I asked is the Sierra Club working with architects.

- Of course, architects are at the other end of the building trades profession, and they are more 'upstream' in the process.
- Many architects are project managers for construction projects.
- Also, architects are the designers for the projects that involve the building trades.

Apparently, the Sierra Club hadn't thought about engaging architects. I mentioned NOMA and noted:

- Professional concerns about diversity of the field.
- Concerns about diversity in the pipeline.

I also mentioned the American Institute of Architects. However, I explained NOMA's mission aligns more with OEJ's objectives.

Dean is happy to meet with NOMA representatives if a meeting could be arranged. Kevin Holland is NOMA's President, but I am less connected with him.

NOMA now has an Executive Director, and I haven't chatted with her.

Do you have a suggestion for how a meeting with the Sierra Club could move forward?

•□□□□□□□ Is this issue of 'apprenticeships for entry into the building trades' an issue that would interest NOMA's leadership?

•□□□□□□□ Do apprentices from the building trades ever make the leap into architecture, or do they grow into an appreciation for architecture as an allied profession?

•□□□□□□□ Do architects have an interest in improving how they interface with the building trades?

Carlton

Carlton Eley
U.S. Environmental Protection Agency
Office of Environmental Justice (MC 2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

email - eley.carlton@epa.gov
ph - [202-566-2841](tel:202-566-2841)
fax - [202-501-0740](tel:202-501-0740)

Equitable Development: Untangling the Web of Urban Development through Collaborative Problem Solving --

<http://louisville.edu/kiesd/sustain-magazine/SUSTAIN%2021.pdf>

"You shouldn't have to be rich to enjoy the riches of the environment, built or natural."

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
Cc: Vernice Miller-Travis[vmiller-travis@skeo.com]; Deeohn Ferris[gerinc@mindspring.com]
From: Leslie Fields
Sent: Tue 10/14/2014 1:04:43 PM
Subject: Re: EJ Strategy Discussion

I can do either time on Thursday. Thanks

On Oct 13, 2014 3:53 PM, "Ali, Mustafa" <Ali.Mustafa@epa.gov> wrote:

Hi everyone,

I hope you had a blessed weekend and your Monday is going well. I wanted to see if you might have some time this Thursday for a strategy conversation. I wanted to see if folks might have time on Thursday at 11 am or 3 pm? If that doesn't work we can try for Friday.

Blessings

Mustafa Ali

Senior Advisor to the Administrator for Environmental Justice [Acting]

Sent from my iPhone

To: Ali, Mustafa[Ali.Mustafa@epa.gov]; ADRIENNE@weact.org[ADRIENNE@weact.org]
From: Lisa Garcia
Sent: Fri 9/16/2016 6:43:24 PM
Subject: Dates for end of October Ej event

Hello!

So great seeing you the other night!

I know you all are still planning, but can you send me the dates for the event in Oct, so I can put a hold on my calendar. I want to make sure I keep them open.

Thanks!

Lisa F. Garcia

Vice President Of Litigation, Healthy Communities

1625 Massachusetts Ave. Nw Ste. 702

Washington, DC 20036-2243

T: (202) 797-5244

F: (202) 667-2356

Facebook/Earthjustice

Twitter@Earthjustice



Because the earth needs a good lawyer

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
Cc: 'Leslie.Fields@sierraclub.org' (Leslie.Fields@sierraclub.org)[leslie.fields@sierraclub.org];
deehhn ferris[gerinc@mindspring.com]
From: Vernice Miller-Travis
Sent: Tue 10/14/2014 11:05:29 AM
Subject: Re: EJ Strategy Discussion

Hi Mustafa,

I'm in a meeting until 4:00 pm on Thursday.

Vernice

Vernice Miller-Travis
Senior Associate
Community Planning & Revitalization Group
Skeo Solutions

On Oct 13, 2014 3:53 PM, "Ali, Mustafa" <Ali.Mustafa@epa.gov> wrote:

Hi everyone,

I hope you had a blessed weekend and your Monday is going well. I wanted to see if you might have some time this Thursday for a strategy conversation. I wanted to see if folks might have time on Thursday at 11 am or 3 pm? If that doesn't work we can try for Friday.

Blessings

Mustafa Ali

Senior Advisor to the Administrator for Environmental Justice [Acting]

Sent from my iPhone

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
Cc: Jessica Hodge[jhodge@earthjustice.org]
From: Stephanie Maddin
Sent: Mon 9/28/2015 9:51:11 PM
Subject: RE: Signing ceremony for Refinery Rule

Pics would be great!! Please forward to both Jessica and I. She's cc'ed.

Sent on the new Sprint Network from my Samsung Galaxy S®4.

----- Original message -----

From: "Ali, Mustafa"
Date:09/28/2015 5:50 PM (GMT-05:00)
To: Stephanie Maddin
Cc: Jessica Hodge
Subject: Re: Signing ceremony for Refinery Rule

Stephanie,

Unfortunately, we won't be able to do that this time but I can make sure that the Agency Photographer shares the photos from the event as soon as it is finished if that would be helpful?

Blessings
Mustafa

Sent from my iPhone

> On Sep 28, 2015, at 4:26 PM, Stephanie Maddin <smaddin@earthjustice.org> wrote:

>

>

> Hi Mustafa!

>

> We are excited to know Hilton Kelley will be in the room for the signing of the Refinery air toxics rule. Is there an opportunity for anyone from our shop to be present? We mainly want to take pics. Ex. 6 - Personal Privacy
Ex. 6 - Personal Privacy so we hope our Clean Air Campaign Manager Jessica Hodge could attend. Please advise asap!

>

> Kind regards,

>

> Stephanie Maddin

> Earthjustice

>

> Sent on the new Sprint Network from my Samsung Galaxy S®4.

To: Lisa Garcia[lgarcia@earthjustice.org]
From: Lisa Garcia
Sent: Wed 3/16/2016 6:59:51 PM
Subject: ITIC.ORG hiring

Helping a friend find a good candidate- job is in DC....please pass on to your contacts. Thanks!

ITI, The Information Technology Industry Council, is hiring a director of environment and sustainability ASAP. We are particularly interested in finding women and underrepresented candidates. I thought this group might know just the right folks.

ITI is a great place to work: smart people, collaborative, fun, lots of time flexibility, etc.

Here's the job description:

<http://www.itic.org/about/careers/director-environment-sustainability>

Please pass it on and let me know if anyone applies and/or you recommend anyone.

Thanks,

Lisa

To: Danielle Deane[DDeane@rabengroup.com]
Cc: Dr. M.K. Dorsey; Ex. 6 - Personal Privacy; Quentin James; Ex. 6 - Personal Privacy; Leslie Fields[leslie.fields@sierraclub.org]; Ex. 6 - Personal Privacy; Donna Hope[donna@imt.org]; Ali, Mustafa[Ali.Mustafa@epa.gov]; Estuardo Rodriguez[erodriguez@rabengroup.com]; Brenda Arredondo[BArredondo@rabengroup.com]; Corey Walker[CWalker@rabengroup.com]; Karen Marangi[kmarangi@rabengroup.com]; Beth Lynk[BLYnk@rabengroup.com]
From: Keith Rushing
Sent: Mon 9/15/2014 9:40:40 PM
Subject: Re: asap: feedback on climate march Green 2.0 postcard: front and back attached

I like the black background too. However, the first version makes it clear that there is a report and that's important I think. I don't know if there's time to place the content of the first on the black background. But if not I think you should go with the first. Also, if Green 2.0 is on a twitter you should include the twitter handle as well.

Keith

On Sep 15, 2014, at 2:28 PM, "Danielle Deane"
<DDeane@rabengroup.com<mailto:DDeane@rabengroup.com>> wrote:

From Mustafa below (thanks for feedback!). Thanks to Leslie who will be handing out flyers too!

Danielle,

I'm on the run but had a chance to check out the flyers very quickly. I like the second one which I believe is "labeled version 2" with the black background it definitely captures your attention.

I would consider asking a basic question of the reader along the top of the flyer/postcard – something like:

Do you support Diversity??? And then lead them to the website – check out the Green 2.0 report

Or

Should all voices be heard in the Environmental movement??? And then lead them to the website - check out the Green 2.0 report

Blessings
Mustafa

From: mkdorsey@professordorsey.com<mailto:mkdorsey@professordorsey.com>
[mailto:mkdorsey@professordorsey.com] On Behalf Of Dr. M.K. Dorsey
Sent: Monday, September 15, 2014 5:08 PM
To: Danielle Deane
Cc: Keith Rushing; Quentin James; Leslie Fields; truss s; Donna Hope; Ali Mustafa
Subject: Re: asap: feedback on climate march Green 2.0 postcard: front and back attached

Not able to deal with this till after 9 pm today.

Sent via Android-Voice2Text®, pardon typos.
On Sep 15, 2014 5:03 PM, "Danielle Deane"
<DDeane@rabengroup.com<mailto:DDeane@rabengroup.com>> wrote:

Michael, Leslie, Quentin, Keith, Donna, Tracy, Mustafa,

I am reaching out to a few of you folks – a subset of Green 2.0 folks who are great thinkers on communications and engaged re the march in some way – regarding using the occasion of the people's climate march to highlight the Green 2.0 effort and asks in a low-cost, not-too-time-consuming way. This email needs a response asap

On the last group Green 2.0 call, folks agreed that that trying to doing anything in person, given what all folks are juggling, was not practical.

But the thought from the call was, how can we leverage existing activity to highlight the report and our goals.

What was landed on was doing a visually attractive post-card sized flyer that we could share with folks on busses, highlighting Green 2.0 (website and handle), the report, and sample tweet .

From you all I need two things:

1. Asap, feedback on the attached. It's the front and back of a postcard sized flyer out folks developed in-house. Tight schedule: we have to send it to print Weds morning (before the working group call) to have it be ready in time. Don't overthink, it does not need to be perfect, but don't want it to be problematic in any way so need your eyeballs.

On change we'll make that's not on the attached yet: we are going to add a sample tweet to the attached as mentioned. Something like:

@diversegreen – diversify mainstream enviro leadership now #peoplesmarch or,
I join @diversegreen's call to diversity mainstream envi mvmt leaders #peoplemarch

(but it will be shorter and more pithy, with the right hashtag for the march – can someone confirm what this is. Suggestions welcome.)

2. Will you be going to the march? I know a couple of you were thinking about it. Willing to share the postcards on a bus? Or Do you know any folks who love what Green 2.0 is up to who you think would be up for sharing postcards with their bus? (in addition to our group of course)

Donna, for example, has offered to ask the EPOC-DC folks to had the flyer out to their folks when they head up.

Thanks in advance for quick response. ☺

Danielle

DANIELLE DEANE | PRINCIPAL | THE RABEN GROUP
1640 RHODE ISLAND AVENUE NW SUITE 600 | WASHINGTON DC 20036
202 466 2543<tel:202%C2%A0466%202543> DIRECT | 202 466 8585<tel:202%20466%208585> MAIN
| 650 387 9984<tel:650%20387%209984> CELL
DDEANE@RABENGROUP.COM<mailto:DDEANE@RABENGROUP.COM> |
WWW.RABENGROUP.COM<http://www.rabengroup.com/>
<image001.png><https://twitter.com/TheRabenGroup>

<image002.png><<http://www.facebook.com/rabengroup>>

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Lisa Garcia
Sent: Sun 12/7/2014 2:27:23 PM
Subject: Re: Closing Plenary Session - EJ Symposium

Thank you!

Sent from my iPhone

On Dec 6, 2014, at 4:46 PM, "Ali, Mustafa" <Ali.Mustafa@epa.gov<mailto:Ali.Mustafa@epa.gov>> wrote:

<photo.JPG>

Mustafa Ali
Senior Advisor to the Administrator for Environmental Justice [Acting]
Sent from my iPhone

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Leslie Fields
Sent: Mon 10/13/2014 7:53:24 PM
Subject: out of office Re: EJ Strategy Discussion

Hello

I am out of the office until October 13. Thanks, Leslie

--

Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

To: pcort@earthjustice.org[pcort@earthjustice.org]; Angelo Logan[alogan@oxy.edu]
Cc: Ali, Mustafa[Ali.Mustafa@epa.gov]; Adrian Martinez[amartinez@earthjustice.org]; mlinperrella@nrdc.org[mlinperrella@nrdc.org]
From: Tejada, Matthew
Sent: Fri 12/11/2015 5:56:09 PM
Subject: RE: Request to check in

Ok, I'll stick with 3 eastern, noon Pacific.

Matthew Tejada

Director - Office of Environmental Justice

Environmental Protection Agency

202-564-8047

From: Paul Cort [mailto:pcort@earthjustice.org]
Sent: Friday, December 11, 2015 12:55 PM
To: Tejada, Matthew <Tejada.Matthew@epa.gov>; Angelo Logan <alogan@oxy.edu>
Cc: Ali, Mustafa <Ali.Mustafa@epa.gov>; Adrian Martinez <amartinez@earthjustice.org>; mlinperrella@nrdc.org
Subject: RE: Request to check in

I believe we have a different MFN call at 10 Pacific. Our call with EPA is scheduled for 12:00 Pacific.

From: Tejada, Matthew [mailto:Tejada.Matthew@epa.gov]
Sent: Friday, December 11, 2015 9:52 AM
To: Angelo Logan
Cc: Ali, Mustafa; Adrian Martinez; Paul Cort; mlinperrella@nrdc.org
Subject: RE: Request to check in

I can get on in ten minutes, but had it scheduled for 3 eastern (2 hours and ten minutes from now...). Are all of you getting on in ten?

Matthew Tejada

Director - Office of Environmental Justice

Environmental Protection Agency

202-564-8047

From: Angelo Logan [mailto:alogan@oxy.edu]
Sent: Friday, December 11, 2015 12:51 PM
To: Tejada, Matthew <Tejada.Matthew@epa.gov>
Cc: Ali, Mustafa <Ali.Mustafa@epa.gov>; Adrian Martinez <amartinez@earthjustice.org>;
pcort@earthjustice.org; mlinperrella@nrdc.org
Subject: Re: Request to check in

Matt and Mustafa, I have attached the letter to the RA (that have gone out so far) and the letter to McCarthy that went out on the 7th.

We will talk to you in ten minutes.

On Fri, Dec 11, 2015 at 6:00 AM, Tejada, Matthew <Tejada.Matthew@epa.gov> wrote:

Let's use **Ex. 6 - Personal Privacy**

Matthew Tejada

Director - Office of Environmental Justice

Environmental Protection Agency

202-564-8047

From: Angelo Logan [mailto:alogan@oxy.edu]
Sent: Thursday, December 10, 2015 6:29 PM
To: Tejada, Matthew <Tejada.Matthew@epa.gov>
Cc: Ali, Mustafa <Ali.Mustafa@epa.gov>; Adrian Martinez <amartinez@earthjustice.org>;
pcort@earthjustice.org; mlinperrella@nrdc.org

Subject: Re: Request to check in

Matt and Mustafa, we will be joined by Melissa, Adrian, and Paul tomorrow. To that end, is there a number we can call into.

On Tue, Dec 8, 2015 at 12:36 PM, Angelo Logan <alogan@oxy.edu> wrote:

I am available on Friday at 12 noon PST. Can you call my cell Ex. 6 - Personal Privacy

Thanks for making the time. Looking forward to talking.

On Tue, Dec 8, 2015 at 12:30 PM, Tejada, Matthew <Tejada.Matthew@epa.gov> wrote:

Hey Angelo

I haven't checked Mustafa's calendar but I am pretty open on Friday afternoon this week. Would that work for you?

M

Matthew Tejada

Director - Office of Environmental Justice

Environmental Protection Agency

[202-564-8047](tel:202-564-8047)

From: Angelo Logan [mailto:alogan@oxy.edu]

Sent: Monday, December 07, 2015 6:47 PM

To: Tejada, Matthew <Tejada.Matthew@epa.gov>; Ali, Mustafa
<Ali.Mustafa@epa.gov>
Subject: Request to check in

Hello Matt and Mustafa, I hope you guys are doing well. I would like to ask for about 15 minutes of your time this week. Can we get on the phone?

Let me know when you all are available.

Also, Can you provide me with Gina McCarthy's email address and fax number. We have our letter ready to send her.

Thanks

--

Angelo Logan

Moving Forward Network

Urban & Environmental Policy Insitute | Occidental College

1600 Campus Road (M-1) | Los Angeles, CA 90041

Office: [\(323\) 259-2759](tel:(323)259-2759)

Email: alogan@oxy.edu

[MFN website](#) | [UEPI website](#)

--

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--

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--

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Office: (323) 259-2759

Email: alogan@oxy.edu

[MFN website](#) | [UEPI website](#)

To: 'Dorceta Taylor'[dorceta@umich.edu]; **Ex. 6 - Personal Privacy**
Ex. 6 - Personal Privacy **Ex. 6 - Personal Privacy**
d.chen@fordfound.org[d.chen@fordfound.org];
ignacia@imorenogroup.com[ignacia@imorenogroup.com]; jalonne@weact.org[jalonne@weact.org];
leslie.fields@sierraclub.org[leslie.fields@sierraclub.org]; P. Simms[PSimms@law.howard.edu];
Ex. 6 - Personal Privacy
Quentin@VestigeStrategies.com[Quentin@vestigestrategies.com]; Ali, Mustafa[Ali.Mustafa@epa.gov];
rrivera@nheec.org[rrivera@nheec.org]; Stephanie Maddin[smaddin@earthjustice.org]
From: Lisa Garcia
Sent: Tue 11/24/2015 6:59:17 PM
Subject: RE: New Diversity Article

Thanks Dorceta!

Hope everyone has a good Thanksgiving and a little downtime spent with family and friends!

Lisa

Lisa F. Garcia

Vice President Of Litigation, Healthy Communities

T: (202) 797-5244

F: (202) 667-2356

Facebook/Earthjustice

Twitter@Earthjustice



Because the earth needs a good lawyer

From: Dorceta Taylor [mailto:dorceta@umich.edu]

Sent: Monday, November 23, 2015 8:34 AM

To: [REDACTED] **Ex. 6 - Personal Privacy**; d.chen@fordfound.org;
ignacia@imorenogroup.com; jalonne@weact.org; leslie.fields@sierraclub.org; Lisa Garcia; P. Simms;
[REDACTED] **Ex. 6 - Personal Privacy**; Quentin@VestigeStrategies.com; Mustafa Ali (Ali.Mustafa@epamail.epa.gov);
rrivera@nheec.org; Stephanie Maddin
Subject: New Diversity Article

Hi,

You might find this interesting: it is a diversity article that examine EE organizations as well as other environmental organizations.

This is a follow-up to last year's diversity eport. It is short and analyzes additional data.

Here is the article link: <http://online.liebertpub.com/doi/pdfplus/10.1089/env.2015.0018>

I am also attaching it below.

--

Dorceta E. Taylor, Professor,

James E. Crowfoot Collegiate Chair

Director of Diversity, Equity, and Inclusion

University of Michigan School of Natural Resources and Environment

University of Michigan Program in the Environment

Author of Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility.

New York University Press (2014).

Author of The Environment and the People in American Cities, 1600s-1900s:

Disorder, Inequality, and Social Change. Duke University Press (2009).
<http://meldi.snre.umich.edu/node/14094>.

*Winner of the 2010 Allan Schnaiberg Outstanding Publication Award from the
Environment and Technology Section of the American Sociological Association*

To: Ali, Mustafa[Ali.Mustafa@epa.gov]; Terry McGuire[Terry.McGuire@sierraclub.org]
From: Leslie Fields
Sent: Wed 9/24/2014 4:59:16 PM
Subject: Re: could you possibly meet with folks from MI & TX coming to testify on SSM around 3pm on Oct 6?

Thanks. Turns out the meeting will probably have to be Oct 7. My colleague Terry McGuire is copied because he's graciously handling the logistics. Thanks, Leslie

On Wed, Sep 24, 2014 at 11:59 AM, Ali, Mustafa <Ali.Mustafa@epa.gov> wrote:

Leslie,

I will definitely try. I'm on the road working on some diesel issues at the moment and will be back in DC late tonight. I know I have to be in Cali that week, so I need to see if I can move some things around and if not who we can get to talk with folks.

Blessings

Mustafa Ali

Senior Advisor to the Administrator for Environmental Justice [Acting]

Sent from my iPhone

On Sep 23, 2014, at 6:07 PM, "Leslie Fields" <leslie.fields@sierraclub.org> wrote:

Hi Mustafa

I hope you're well. I'm recovering from the NYC Climate rally. We've got folks coming to testify on the SSM rule on Oct 6. Would it be possible for you to meet with them to tell what else the EPA is doing on it re: EJ:? thanks, Leslie

--

Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

--

Leslie G. Fields
Director, Environmental Justice & Community Partnerships Program
Sierra Club
50 F Street NW, Eighth Floor

Washington, DC 20001
202-548-4586
Leslie.Fields@sierraclub.org
www.sierraclub.org/ejcp

To: Ali, Mustafa[Ali.Mustafa@epa.gov]
From: Marianne Engelman Lado
Sent: Wed 3/16/2016 2:41:12 PM
Subject: OCR's NPRM
[Comments on Title VI NPRM.pdf](#)
[All Exhibits.pdf](#)

Dear Mustafa,

Attached please find comments filed on Monday by Earthjustice, the NAACP Legal Defense & Educational Fund, Inc., and NRDC on behalf of approximately 60 groups and a number of individuals on EPA's proposal to amend its Title VI regulations. Please feel free to let me know if the comments raise any question or you would be interested in discussing them.

As you may know, the deadline for submitting the comments was extended until March 12 but because it was a Saturday, OCR posted information on its website that comments could be filed through Monday, March 14th. On Monday, however, regulations.gov no longer accepted comments and I received emails from a number of groups that were having difficulty figuring out how to file comments. I communicated with OCR and ultimately Jeryl Covington said that she would accept comments by email. We were able to communicate to many in our network of partners about filing at epa.gov and, later, c/o Jeryl Covington, but I don't know if there were others who were stymied.

At some point in the near future, it would be great to touch base on environmental justice issues and the intersection with civil rights compliance and enforcement.

Best,

Marianne

Marianne Engelman Lado

Senior Staff Attorney

Earthjustice

48 Wall Street, 19th Floor

New York, NY 10005

T: 212.845.7393

F: 212.918.1556

earthjustice.org



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delete the message and any attachments.

Exhibit 1

Advocates for Environmental Human Rights * CATA-The Farmworkers Support Committee
Center for Community Action and Environmental Justice * The Center on Race, Poverty & the
Environment * Central Valley Air Quality Coalition * The City Project * Earthjustice
Environmental Justice League of Rhode Island * Farmworker Justice
Global Community Monitor * Human Synergy Works * Los Jardines Institute (The Gardens
Institute) * National Black Law Students Association * Natural Resources Defense Council
New Mexico Environmental Law Center * Public Advocates Inc. * Sierra Club
Tri-Valley CAREs * West End Revitalization Association * Marc Brenman
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July 3, 2012

Lisa Jackson
Administrator
Attn: Plan EJ 2014
USEPA
Office of Environmental Justice
Mail Code 2201-A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson,

The undersigned organizations and individuals submit these comments on the draft of —Plan EJ 2014 Supplement: Advancing Environmental Justice Through Title VI,¹ to emphasize the importance of Title VI enforcement in communities across the country and to call on EPA to dedicate to this effort the resources and expertise needed now and over a sustained period of time to address discrimination on the basis of race, color, and national origin, and to advance environmental justice in an effective and meaningful way. For too long communities have waited for EPA's Office of Civil Rights (—OCR¹) to prevent and address racial and ethnic disparities in the distribution of environmental contaminants and health hazards, as well as the denial of environmental benefits. We appreciate EPA's recognition that Title VI and nondiscrimination statutes are—important tools in the Agency's efforts to address discrimination and advance environmental justice,¹ and we are pleased to see a timetable for concrete action to overcome deficiencies in EPA's Title VI enforcement program. At the same time, the Title VI Supplement is skeletal, leaving many of the details to be worked out at a later date. In this letter, we identify some of the key issues that must be resolved in a final Title VI Supplement.

1. Effective Title VI Enforcement Rests on the EPA's Willingness to Establish Zero Tolerance of Discrimination and to Impose Meaningful Remedies.

¹ EPA, *Plan EJ 2014 Supplement: Advancing Environmental Justice Through Title VI Draft 1* (2012) (—*Title VI Supplement*”).

The Title VI Supplement emphasizes improved communication with recipients of federal funds, promotion of dialogue with the states, and the creation of incentives through performance agreements and performance partnership grants.² While it is important that EPA establish measures to assist recipients in understanding their Title VI obligations within the context of their regulatory programs and legal authorities, a focus on the preventative aspect of Title VI compliance, alone, is not enough.³ The history of EPA's failure to enforce Title VI has dramatically demonstrated that recipients will not fulfill their obligations under Title VI and use their legal authorities or expertise aggressively to eliminate, reduce or avoid racially disparate impacts. The economic and political pressures toward regulatory leniency are simply too great. EPA has been well aware of this dynamic, particularly in light of the candor of a high ranking state official, who noted in 2000, after EPA's last significant effort to implement Title VI, that EPA's Draft Title VI guidance was a—tiger without teeth—and that—he was not going to pay particular attention to it.⁴ Indeed, in the years following the issuance of draft guidance documents,⁵ Title VI enforcement was at a standstill. Cases that were not dismissed under procedural or jurisdictional grounds remained unresolved. It is time for the EPA to put the teeth back into the civil rights tiger, and use its authorities under this important civil rights law to remedy actions with unjustified disparate impacts. Until that happens, Title VI enforcement will continue to be illusory.⁶

A recent Title VI case illustrates how OCR is effectively failing to deter federal fund recipients from discriminatory practices, and bears out the observation that federal funds have never been revoked from recipients of funding from EPA based on a violation of Title VI of the Civil Rights Act of 1964. In that case, *Angelita C. v. California Department of Pesticide Regulations*,⁷ the first and only time that EPA has formally made a preliminary finding of

² *Id.* at 1-3.

³ The Title VI Supplement seems to focus almost exclusively on public recipients of federal funds. This document, and EPA's enforcement program, should make clear that all programs and activities receiving EPA funding must comply with Title VI, whether they be public or private.

⁴ See *Environmental Justice: Draft Revised Civil Rights Guidance Clarifies Definitions, Addresses State Issues*, 31 Env't Rep. 1331 (June 23, 2000) (quoting Russell Hardin, then Director of Michigan's Department of Environmental Quality).

⁵ Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39,650 (June 27, 2000) (Draft Guidance Documents).

⁶ In a similar vein, we hope that EPA's commitment to Title VI enforcement will translate into an approach that is holistic rather than segmented. For example, the draft Title VI Supplement recognizes that OCR has pre-award and post-award compliance responsibility (affirmative responsibility) as well as the authority to investigate and resolve complaints. See *Title VI Supplement*, *supra* note 1, at 4. OCR does not, however, address how the agency might use these authorities together—for example, if a complaint is filed with a jurisdictional defect that otherwise raises cognizable claims, OCR should use its affirmative authority to conduct a post-award compliance review. A commitment to Title VI enforcement should include a clear message that agency staff should exercise the full scope of their authority and responsibility to ensure that federal monies are not being used in a discriminatory manner.

⁷ *Angelita C. v. California Department of Pesticide Regulations*, Title VI Complaint No. 16R-99-R9 (Apr. 22, 2011), <http://www.epa.gov/ocr/TitleVIcases/title6-settlement-agreement-signed.pdf>.

discrimination, it took OCR more than ten years, from 1999 to 2011, to find that there was a *prima facie* violation of Title VI.⁸ We applaud EPA for finally making a preliminary finding. Despite the finding, however, the California Department of Pesticide Regulations (DPR) was not in jeopardy of losing funds provided by EPA for the application of the toxic pesticide methyl bromide on Latino schoolchildren and DPR was not held accountable for its actions. Although we understand that fund termination is a remedy generally preceded by other less drastic forms of corrective action, in the absence of real, meaningful enforcement mechanisms, OCR operates as a toothless vehicle for enforcing Title VI. Ultimately, in this case, as in other pending matters, OCR failed to remedy or prevent racially disparate pesticide exposures.

Though we are eager for EPA to develop a strong enforcement program that will ensure compliance with the nondiscrimination requirements of Title VI, we raise concerns about *Angelita C.* in more detail because OCR's handling of the case continues to demonstrate to recipients of federal financial assistance that EPA is still not prepared to demand that recipients change their ways to assure compliance.

Complainants in *Angelita C.* alleged that the DPR discriminated against Latino school children by allowing unhealthy levels of methyl bromide, a highly toxic fumigant, to be applied near schools attended primarily by Latino students. Schools with predominantly white student populations, by contrast, were not subject to unhealthy methyl bromide exposures in California. This pattern and practice of allowing methyl bromide to be applied near schools, the complaint alleged, caused an adverse and disparate impact on Latino school children and their parents, which violated Title VI of the Civil Rights Act.

EPA agreed, and on April 11, 2011, issued a preliminary finding that the Complaint established a *prima facie* violation of Title VI.⁹ Despite the Preliminary Finding and without notifying the complainants, EPA then negotiated a settlement agreement with DPR that required extended monitoring of methyl bromide and other pesticide products at several monitoring stations in San Joaquin, Kern, Ventura, Santa Barbara, and Monterey counties through 2013 and further ordered DPR to conduct outreach and communications on pesticide drift. Under the settlement agreement, there is no required cessation of racially disparate pesticides exposure. EPA did not ensure that discriminatory methyl bromide or other pesticide exposures would cease, nor did the agency mandate use reduction should monitoring disclose excessive ambient concentrations of a pesticide.¹⁰ The agreement merely required additional monitoring when

⁸ See *id.*

⁹ See EPA Office of Civil Rights, *Investigative Report for Title VI Administrative Complaint File No. 16R-99-R9 37* (Aug. 25, 2011), available at www.epa.gov/ocr/TitleVI/cases/ir-082511.pdf.

¹⁰ EPA justified the settlement agreement recently in a letter from Raphael DeLeon to Brent Newell, dated May 23, 2012 (attached as Exhibit 1). EPA believed that the settlement was appropriate given the complaint's focus on methyl bromide, regulations adopted by DPR to limit fumigant usage in certain California air basins, and the belief that the Montreal Protocol had reduced Methyl Bromide Usage. Letter from Raphael DeLeon, Dir., EPA, to Brent Newell (May 23, 2012) (on file with author). EPA failed to recognize that, as a matter of federal law under the Clean Air Act, the fumigant cap will only apply in Ventura County, that several other fumigant products are replacing methyl bromide, and that the most recent pesticide emissions inventory (2010) demonstrated increased

discrimination occurred rather than prohibiting the conduct. The significance goes beyond this individual case: the threat of EPA enforcement will not be taken seriously by funding recipients if EPA's compliance assurance efforts do not eliminate the adverse and disparate impact on the basis of race and ethnicity. If other Title VI complaints demonstrate merit, as *Angelita C.* did, and EPA does not demand compliance with Title VI, then recipients of federal funding will ignore Title VI to the detriment of affected communities nationwide.

2. EPA's Title VI Program Must Be Consistent with the U.S. Government's Legal Obligations under Executive Order 12250, Executive Order 12898, and the Convention on the Elimination of all Forms of Racial Discrimination, a Human Rights Law.

Other provisions of law reinforce EPA's duties under Title VI.¹¹ For example, pursuant to Executive Order 12250, —Leadership and Coordination of Nondiscrimination Laws,||¹² Executive Order 12898, —Federal Actions to Address Environmental Justice in Minority and Low-Income Populations|| (—EJ Executive Order||),¹³ as well as obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (—CERD||), a human rights law, EPA is required to issue appropriate directives, implement Title VI and other applicable civil rights laws, and afford—effective protection and remedies|| for actions with the —purpose or effect|| of negatively impacting members of particular racial and ethnic groups.¹⁴

The United States ratified CERD in 1994, incorporating its provisions into the American system of law pursuant to Article 6 of the U.S. Constitution.¹⁵ As the U.S. Government explained in 2000, compliance with CERD is fully consistent with domestic civil rights laws, including Title VI of the Civil Rights Act of 1964, which is part of—the most important civil rights legislation in U.S. law....||¹⁶ Furthermore, the U.S. Government has noted that the EJ

emissions in California, and, for Ventura County and its fumigated strawberry fields, the highest emissions levels since 1990.

¹¹ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2012).

¹² Exec. Order No. 12,250, 45 Fed. Reg. 72,995 (Nov. 4, 1980).

¹³ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

¹⁴ See International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195, 212; see also International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

¹⁵ U.S. Const. art. VI, cl. 2 (—This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.)). The United Nations adopted CERD in 1965. The United States joined as a signatory to CERD in 1966 and ratified CERD in 1994. See Reports Submitted by States Parties Under Article 9 of the Convention, CERD/D/351/Add.1, ¶ 3 (Oct. 2000) available at <http://www.state.gov/documents/organization/100306.pdf>.

¹⁶ *Id.* at ¶ 88.

Executive Order and the application of Title VI to achieve environmental justice are critical to fulfill the non-discrimination mandate of Article 5 of CERD, which prohibits racial discrimination and guarantees the enjoyment of the right to public health without distinction as to race, color, national or ethnic origin.¹⁷

We urge EPA to recognize that the development of an effective Title VI program is the legal foundation for the implementation of environmental justice policies and furthers the ability of the United States to protect human rights in compliance with CERD.

3. The Title VI Supplement Should Explicitly Address How EPA's Enforcement Program will Incorporate and Promote the Objectives of Environmental Justice.

EPA continues to express its commitment to environmental justice in the Title VI Supplement. However, the goals and strategies outlined in the Title VI Supplement raise serious questions about how EPA will resolve longstanding concerns about the implementation of its own Title VI regulations, let alone broader challenges that Plan EJ 2014 seeks to address. Despite the issuance of the EJ Executive Order that was signed by President Clinton nearly twenty years ago,¹⁸ environmental justice communities remain vulnerable due to the policies and decisions of a variety of parties, including the recipients of federal funds. Critics recognize that EPA does not adequately exercise its authority to shield environmental justice communities from disparate impacts.¹⁹ EPA's planning process, including Plan EJ 2014 and EPA's Strategic Plan for 2011 to 2015, will only succeed if it carefully examines the root causes of its inadequate response.

One such cause is the failure of EPA to incorporate principles of environmental justice into all of its programs, policies, and activities.²⁰ Recently, EPA established three broad goals to inform its efforts to reach a level of integration first envisioned in the EJ Executive Order: (1) protect health and environment in—overburdened communities ;|| (2)—[e]mpower communities to take action to improve their health and environment ;|| and (3)—[e]stablish partnerships with

¹⁷ *Id.* at ¶¶ 389-95. See also International Convention on the Elimination of Racial Discrimination, *supra* note 14, at art. 5(e)(iv), available at <http://www2.ohchr.org/english/law/cerd.htm>.

¹⁸ Exec. Order No. 12,898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, 59 Fed. Reg. 7629 (Feb. 11, 1994).

¹⁹ See, e.g., Nat'l Acad. of Pub. Admin., *Environmental Justice in EPA Permitting: Reducing Pollution in High Risk Communities is Integral to the Agency's Mission* 2 (2001); U.S. Comm'n on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice* 167 (2003); Bradford C. Mank, *Executive Order 12,898, in The Law of Environmental Justice: Theories and Procedures to Address Disproportionate Risks* 101, 103 (2d ed. 2008). Denis Binder et al., *A Survey of Federal Agency Responses to President Clinton's Executive Order 12,898 on Environmental Justice*, 31 Env'tl. L. Rep. 11,133, 11,141 (2001); See also Bayview Hunters Point Cmty. Advocates, The Chinese Progressive Ass'n, People Org. to Demand Env'tl. & Econ. Rights & Our Children's Earth Found., *Letter to U.S. E.P.A.*, (July 15, 2005).

²⁰ See EPA, *Plan EJ 2014* 4 (2011), available at <http://www.epa.gov/compliance/ej/resources/policy/plan-ej-2014/plan-ej-2011-09.pdf> (←Plan EJ 2014||).

local, state, tribal, and federal governments and organizations to achieve healthy and sustainable communities.||²¹ EPA further recognizes that environmental justice is not just an environmental and public health issue, but a civil rights imperative as well. ²² While we agree with these goals, our concerns about the Title VI Supplement are in part due to the document's failure to establish concrete mechanisms to promote these basic objectives.

EPA historically promoted a limited number of initiatives to ensure that communities are protected from disparate impacts, such as the Agency's Small Grants Program and a Federal Interagency Working Group on Environmental Justice. Plan EJ 2014 tries to make broad improvements to these efforts. For example, the plan appears more focused on community—empowerment|| than previous efforts, and it expands the concept of—fair treatment|| to include not only the distribution of burdens but also—the distribution of the positive environmental and health consequences from [EPA] activities. ||²³ The Title VI Supplement briefly mentions ways in which a focus on benefits and burdens might be addressed, such as re—evaluating Title VI regulations and reviewing programmatic standard operating procedures. Yet the Title VI Supplement fails to explain how a more inclusive view of disparate impact would guide EPA's complaint processing or compliance assurance efforts. More broadly, it is troubling that EPA continues to stress that it has—considerable latitude|| in determining disparate impact without providing needed specificity about basic methodology or defining the standard itself.²⁴ This is disappointing, particularly in light of the significant advances that have been made in empirical environmental justice research. Moreover, vague promises to reconsider Title VI implementing regulations without elaboration only perpetuates the concern that EPA will opt to enhance its flexibility at the expense of a prompt processing timeframe and clearer standards for how burdens and benefits should be distributed by recipients of federal funds.

With regard to Plan EJ 2014's goal of community empowerment, the Title VI Supplement only mentions, in a general way, the value of community participation in the pursuit of environmental justice. Evidence of this focus on participation can be found in the recommendations of EPA's Civil Rights Executive Committee in January 2012. ²⁵ We agree on the importance of this principle, but methods of implementation remain fairly abstract within the document. Change in EPA's policy and practice will require concrete steps, which should be prioritized in the Title VI Supplement. EPA's current policy and practice leaves out impacted

²¹ *Id.* at i.

²² *See id.*

²³ *Id.* at 3.

²⁴ Civil Rights Exec. Comm., EPA, *Developing a Model Civil Rights Program for the Environmental Protection Agency: Final Report* 12 (Apr. 13, 2012), available at http://www.epa.gov/epahome/pdf/executive_committee_final_report.pdf. For additional comments on EPA's Draft—Recommendations for Developing a Model Civil Rights Program,|| see The City Project, Letter to Lisa Jackson (February 17, 2012), attached as Exhibit 2.

²⁵ *Id.* at 15 (—In some cases, better communication, community engagement, and technical assistance may mitigate or resolve community concerns.||).

communities from participation in Title VI complaint processing.²⁶ Complainants are the people most affected by discriminatory impacts, and their continual absence from participation in the investigation and resolution of Title VI complaints only ensures that important aspects of the investigation and remedial action will be minimized or missed altogether. If the EPA is to take seriously the goal of community empowerment, as well as the recommendation of EPA's Civil Rights Executive Committee, the Agency should place environmental justice communities on equal footing with other stakeholders in Title VI implementation. In contrast, the Title VI Supplement is heavily weighted in favor of assisting and involving recipients of federal funds, in order to—improve efficiencies in Title VI compliance.||²⁷ Language in favor of pre- and post-award compliance assurance for fund recipients, technical assistance to recipients, and efficiencies in compliance is not matched by even a broad sketch of how communities might play a productive role, pursue meaningful data collections and effective remedies, or engage in other activities throughout the complaint process. The only exception to this in the Supplement is a brief discussion regarding limited English proficiency.

The Title VI Supplement furthers EPA's cross-agency focus, which may be a positive step. However, the document does not explain how communities, were they to be meaningfully included, would navigate an increasingly Byzantine multi-agency process. For example, EPA suggests that there should be efforts to mobilize resources—across EPA,|| partner with other federal agencies, and share responsibility among offices (including OCR) and EPA regions.²⁸ But little is said in the Supplement about how complainants will interact with the recently proposed Case Management Protocol, which would be set by internal agency order.²⁹ EPA is prioritizing work with other federal agencies—to strengthen the use of Title VI,|| but fails to identify activities or tasks to improve coordination of referrals and follow up.³⁰ In addition, the Title VI Supplement and work of EPA's Civil Rights Committee to limit the Office of Civil Rights' involvement in case processing threaten to further marginalize communities who seek meaningful involvement at each stage of an administrative complaint. Without concrete, practical ways to remove participatory barriers, EPA cannot achieve its overarching goal of establishing effective partnerships that prevent discrimination, not only between EPA and recipients of federal funds, but across a range of stakeholders.³¹

EPA's relative lack of attention to community concerns and the limited role of complainants, its insistence that it has substantial—latitude|| in investigating and making determinations about disparate impact (without more elaboration), and its desire to promote an

²⁶ While the Draft Investigator Guidance notes that the EPA—may|| involve complainants in complaint processing, 65 Fed. Reg. at 39,671, it is the experience of many of the signatories that the communities with which they work have not been afforded the opportunity to be involved.

²⁷ *Title VI Supplement*, *supra* note 1, at 1.

²⁸ *Id.* at 4; *Plan EJ 2014*, *supra* note 20, at 10-11, 14.

²⁹ *Plan EJ 2014*, *supra* note 20, at 13.

³⁰ *Id.* at 8, 20.

³¹ *Id.* at i.

informal, alternative dispute resolution -driven process that omits community participation fails to provide assurance that meaningful Title VI reform is underway.³² Unfortunately, EPA does not explain how it intends to use citizen-generated and recipient-generated data, how it will reconcile potential inconsistencies with its own data and other evidence of disparate impact, or how its decisions will result in the achievement of non-discrimination standards through appropriate enforcement mechanisms.

4. A Robust Title VI Compliance Program Requires that EPA Finalize Guidelines to Ensure Clarity, Transparency, and Standardization, and that Those Guidelines Comport with Civil Rights Law.

The Title VI Supplement sets the goal of establishing—a robust Title VI pre-award and post-award compliance program,³³ but fails to commit to finalizing draft Title VI guidance documents.³⁴ More than a decade ago, EPA published the Draft Guidance Documents. Indeed, many of the signatories to this letter submitted extensive comments on the Draft Guidance Documents.³⁵ EPA has neither responded to those comments nor, after twelve years, finalized guidance documents. Continued reliance on the Draft Guidance Documents raises a host of substantive and procedural questions, not the least of which is a lack of clarity and transparency about the non-discrimination standards to be applied by OCR. As an element of the Title VI Supplement, EPA should commit to finalizing revised guidance documents, both to clarify and standardize EPA's practices and, also, to bring EPA's policies and practices into line with the standards utilized by the Department of Justice and other agencies and to resolve the flawed provisions in the Draft Guidance Documents. While an exhaustive analysis of the Draft Guidance Documents is outside the scope of these comments, this section contains a few illustrative examples of their deficiencies.

Historically, EPA has tended to interpret its Title VI responsibilities and authorities through the lens of traditional environmental regulation—relying on a presumption that protection for communities is adequate if recipients are in compliance with environmental statutes. Simply put, this approach is inconsistent with civil rights law and has failed to eliminate the adverse or disparate impacts to environmental justice communities that EPA's Title VI regulations seek to forbid. We strongly urge EPA to move away from reliance on the traditional environmental regulatory approach to discrimination issues and to apply the congressionally mandated civil rights framework. A revision of the Draft Guidance Documents

³² *Id.* at 12.

³³ *Title VI Supplement*, *supra* note 1, at 3, 5.

³⁴ *See id.* at 5 (Activities 1.1 – 1.5).

³⁵ *See generally* Ctr. on Race, Poverty, & the Env't, Cal. Rural Legal Assistance Found., *Comments on Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits and Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (August 26, 2000), available at http://www.epa.gov/ocr/docs/t6com2000/t6com2000_071.pdf; *see also* Eileen Gauna, *EPA at 30, Fairness in Environmental Protection*, 31 *Env'tl. L. Rev.* 10528 (2001) (analyzing the Investigatory Guidance).

should make clear that technical compliance with environmental laws and regulations is not the measure of whether programs or activities have an adverse impact within the meaning of civil rights law. While the framework for assessing whether a recipient is in violation of the discriminatory effects standard in EPA's Title VI implementing regulations includes a determination of whether the impact of a recipient's programs or activities is both adverse and borne disproportionately by a group of persons based on race, color, or national origin, the regulations are silent as to how adverse impact is to be assessed. Compliance with environmental laws and standards should not be the ruler for civil rights compliance. Title VI is a civil rights statute, and it is independent of environmental laws and standards. Before the Supreme Court ruling in *Alexander v. Sandoval*,³⁶ when cases of disparate impact were adjudicated in court, the threshold for establishing impact was much lower than EPA's current standards suggest. With rare exception, the crux of the inquiry focused on whether or not the impact was felt disproportionately on the basis of race or national origin, not the magnitude of the impact itself.³⁷ In one of the few cases to question whether plaintiffs had established the impact prong of the *prima facie* case, *U.S. v. Bexar County Hosp.*,³⁸ the court was concerned about whether traveling for what the court presumed would be superior health care constituted cognizable harm, not whether the level of impact met a technical standard imposed by the U.S. Department of Health & Human Services or another statute.

In particular, final Title VI guidance documents should remove any confusion caused by the *Select Steel* decision.³⁹ Compliance by recipients with standards adopted pursuant to the Clean Water Act, Clean Air Act, or other environmental laws does not mean that persons are not adversely affected by the recipients' programs or activities. Environmental statutes, regulations, and standards are the outcome of political and administrative processes, which take into account an array of competing interests and criteria. As was the case with *Select Steel*, these standards may involve averaging emissions over large geographical areas that, if viewed in isolation, can hide disparities. They are, again, not the benchmark for a determination of impact. Among other things, environmental standards do not fully capture harms to public health and the environment. These standards change over time, for instance, precisely because they are found to be insufficiently protective.⁴⁰ We note, also, that the Draft Guidance Documents already

³⁶ *Alexander v. Sandoval*, 532 U.S. 275, 275 (2001) (holding that "[t]here is no private right of action to enforce disparate-impact regulations promulgated under Title VI").

³⁷ See Jenkins, *Title VI of the Civil Rights Act of 1964: Racial Discrimination in Federally Funded Programs*, in *Civil Rights Litigation and Attorney Fees Annual Handbook* 186 (1994).

³⁸ *U.S. v. Bexar County Hosp.*, 484 F. Supp. 855, 859-60 (W.D. Tex. 1980).

³⁹ EPA, Office of Civil Rights, *Investigative Report for Title VI Administrative Complaint File No. 5R-98-R5* (1998) (*Select Steel*).

⁴⁰ Primary National Ambient Air Quality Standards for Nitrogen Dioxide, 75 Fed. Reg. 6,474, 6,480 (Feb. 9, 2010) (discussing new evidence regarding the relationship between NO₂ exposure and health effects). Along these lines, we note the decision of the Environmental Appeals Board (EAB) in which the EAB concluded that EPA erred when it relied solely on compliance with the then-existing annual National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO₂) as sufficient to find that the Alaska Native population would not experience adverse human health or environmental effects from the permitted activity. Though this decision arose in the context of the EJ Executive Order, and also turned on the fact that the NO₂ air quality standard was under revision, it is clear that

contain some language clarifying that—[c]ompliance with environmental laws does not constitute per se compliance with Title VI.||⁴¹ We agree. But although the provisions in the Draft Guidance Documents suggest that compliance with environmental laws may not be *per se* compliance with Title VI, nonetheless as a practical matter environmental regulatory standards largely determine Title VI compliance because of the presumption of compliance that EPA imposes if environmental standards are not exceeded.⁴² Other sections of the Draft Guidance Documents currently reinforce the erroneous notion that environmental standards will be used to determine whether a program or activity has an—impact.|| This is in error. While noncompliance with an environmental or health standard may be relevant to a finding of adverse impact in some contexts, compliance with a federal, state, or local environmental standard does not negate otherwise valid evidence of harm or disparity under civil rights law.

Revisions of the Draft Guidance Document must also correct other errors. To consider just one of many, for example, the guidance should make clear that adverse impacts may involve harms to health, damage to the environment, reduction in property values, harm to cultural values (including, for example, harm to cultural or sacred sites), or social harms (including, for example, segregatory effects), among others, and are not limited to measurable health effects recognized by environmental regulations. Title VI prohibits recipients from excluding, denying the benefits of a program or activity, or subjecting people to discrimination on the basis of race, color, or ethnicity. This language contemplates the full range of potential impacts—for example, permitting that would have a segregatory effect is a cognizable form of injury.⁴³ In addition,

current compliance with an environmental standard is not determinative of whether an action or policy has an adverse impact. Though EAB rulings have not uniformly required the Agency to take into account newer data regarding the sufficiency of environmental standards to protect public health when issuing permits, *see, e.g., In Re Shell Offshore, Inc., OCS Permit No. R10OCS030000*, at 82-83 (March 30, 2012) (Order Denying Petitions for Review), *available at* [http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Decision~Date/148252B4723F0450852579D100714934/\\$File/Shell%20Kulluk.pdf](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Decision~Date/148252B4723F0450852579D100714934/$File/Shell%20Kulluk.pdf), there is no doubt that standards in force to implement environmental laws at any given time do not and cannot capture all impact of a challenged activity.

⁴¹ 65 Fed. Reg. at 39,680.

⁴² *Id.* ([W]here the area in question is attaining that [NAAQS] standard, the air quality in the surrounding community will generally be considered presumptively protective and emissions of that pollutant should not be viewed as ‘adverse’ within the meaning of Title VI.)).

⁴³ The Draft Guidance Documents contain language that may be interpreted as limiting analysis of effects to a subset of impacts. *See, e.g.,* 65 Fed. Reg. at 39,660 (In a section entitled—Relevant Data,|| the draft Guidance lays out an—order of preference|| of relevant data to be used to conduct the analysis of adverse impact. The list starts with —[a]mbient monitoring data|| and—[m]odeled ambient concentrations.|| Notably, the list does not specifically identify outcome data—for example, high asthma or cancer rates. The list itself and the prioritization of items on the list reinforce an impression that a finding of adverse impact is contingent on environmental laws and standards and, also, that non-environmental harms will be ignored.); 65 Fed. Reg. at 39,661 ([Generally, the risk or measure of impact should first be evaluated and compared to *benchmarks* provided under relevant environmental statutes, regulations or policies.]) (emphasis added); 65 Fed. Reg. at 39,680 (examples of adverse impact benchmarks); 65 Fed. Reg. at 39,680 ([W]here the area in question is attaining that [NAAQS] standard, the air quality in the surrounding community will generally be considered presumptively protective and emissions of that pollutant should not be viewed as ‘adverse’ within the meaning of Title VI.)). These provisions and any similar language in the Draft Guidance Documents should be revised to make clear that while violations of environmental standards are evidence of harm, compliance does not negate other indicia or evidence of impact.

investigating adverse impacts should not be constrained by gaps in scientific knowledge about exposure, exposure pathways and health effects, or more broadly, the expertise of EPA or the recipients. As stated above, evidence of any adverse impact is relevant to a finding of discrimination.⁴⁴ Moreover, the standard for measuring impact is—adversity, not—significant adverse impact, as the Draft Guidance Documents would suggest. A narrow interpretation of the term—significant can set the bar so high that it would effectively gut Title VI enforcement. Reliance on regulatory significance levels can also ignore the contributing effects of cumulative impact and synergistic risks, among other things. Instead, EPA should recognize that adverse impact above *de minimis* levels can constitute a violation.⁴⁵

In addition to modifying provisions regarding the process for engaging complainants to incorporate principles of environmental justice,⁴⁶ EPA should also clarify how the—cost and technical feasibility of less discriminatory alternatives will be assessed.⁴⁷ As the Draft Guidance Document is currently written, consideration of cost and technical feasibility could obliterate the obligation not to discriminate.

5. Any Re-Evaluation of EPA’s Title VI Regulations Should Strengthen, Not Weaken EPA’s Title VI Enforcement Program.

The Title VI Supplement indicates that in consultation with the U.S. Department of Justice, EPA will re-evaluate its Title VI regulations and make any necessary changes.⁴⁸ To address environmental justice issues effectively in its Title VI enforcement program, EPA must re-shape its regulatory approach under Title VI in both form and substance. To that end, we support a thoughtful re-evaluation of EPA’s Title VI regulations, but believe the re-evaluation

⁴⁴ The Draft Guidance Documents err when limiting cognizable harms to those within EPA’s or a recipient’s expertise or—authority. See, e.g., 65 Fed. Reg. at 39,670 (“In determining whether a recipient is in violation of Title VI or EPA’s implementing regulations, the Agency expects to account for the adverse disparate impacts . . . within the recipient’s authority.”).

⁴⁵ The guidance should not raise the ante by requiring that the adverse impact be—significantly adverse. See, e.g., 65 Fed. Reg. at 39,680 (“OCR intends to use all relevant information to determine whether the predicted impact is significantly adverse under Title VI.”); 65 Fed. Reg. at 39,680 (“Where the risks or other measure[sic] of potential impact meet or exceed a significance level, they generally would be recognized as adverse”); 65 Fed. Reg. at 39,660 (“Adverse disparate impact decision: Determine whether the disparity is significant.”); 65 Fed. Reg. at 39,661 (“Resources for Assessing Significance of Impact: Assessing the significance of a risk”); 65 Fed. Reg. at 39,661 (“You may consider whether any scientific or technical information indicates that those impacts should be recognized as significantly adverse”); 65 Fed. Reg. at 39,665, 39,684 (definition of term—adverse impact: “A negative impact that is determined by EPA to be significant based on comparisons with benchmarks of significance”).

⁴⁶ See, e.g., 65 Fed. Reg. at 39,671 (suggesting that OCR—may involve complainants in the informal resolution process, leaving this important step to OCR’s discretion).

⁴⁷ See 65 Fed. Reg. at 39,683 (“OCR will likely consider cost and technical feasibility in its assessment of the practicability of potential alternatives.”).

⁴⁸ *Title VI Supplement*, *supra* note 1, at 7 (Strategy 1, Activity 1.4).

should only be used as an opportunity to clarify and strengthen the regulations, rather than to weaken them.

Most significantly, revisions should not be used as an opportunity to modify timelines for agency action.⁴⁹ Only six percent of the 247 Title VI complaints have been addressed within the OCR's twenty-day time limit.⁵⁰ This backlog of cases, stretching back to 2001, represents decades of delay. As the Deloitte Report clearly showed, OCR's failure to comply with the timelines reflects poor performance on the part of the agency rather than a problem with the regulatory timeline.⁵¹

At the same time, reconsideration of the Title VI regulations provides an opportunity to include formal rights for complainants to participate meaningfully in the administrative process and informal resolution, with provisions to address issues of confidentiality. Such revisions are essential for bringing processes for complaint investigation into line with environmental justice principles. The OCR complaint investigation process has excluded complainants, the community stakeholders, from the decision-making process. As discussed above, this practice is in direct contradiction of the primary strategy underlying the Plan EJ 2014 to—[e]mpower communities to take action to improve their health and environment.⁵² To address these issues, communication and consultation should, for example, be required at the stage of informal resolution.⁵³ Revised regulations should also make clear that if the Administrator reviews a determination of the Administrative Law Judge, complainants should also be notified and given reasonable opportunity to file written statements and present their evidence and arguments to the Administrative Law Judge.⁵⁴

6. The Re-Evaluation of the Regulations and Interpretive Guidelines Should be Transparent and Engage Stakeholders.

⁴⁹ See 40 C.F.R. § 7.120 (2012) (OCR to notify complainant and recipient of receipt of the complaint within 5 days and complete the jurisdictional review within 20 days from the acknowledgement of the complaint); 40 C.F.R. § 7.115(c) (OCR to complete investigation and issue preliminary findings within 180 days of the start of a compliance review or complaint investigation).

⁵⁰ Deloitte Consulting LLP, *Evaluation of the EPA Office of Civil Rights* 2 (2011). As of April 2012, eleven complaints were still in the—Jurisdictional Review—period, long past OCR's twenty-day time limit. EPA, Office of Civil Rights, *Title VI Complaints Listing*, http://www.epa.gov/ocr/docs/extcom/2012_04_title_vi_open_complaints.pdf (last updated Apr. 2012).

⁵¹ Deloitte Consulting LLP, *supra* note 50, at 2.

⁵² *Plan EJ 2014*, *supra* note 20, at i.

⁵³ See 40 C.F.R. 7.120(d)(2), and if OCR is making a finding, 42 C.F.R. 7.130(b)(1).

⁵⁴ See 40 C.F.R. 7.130(b)(3)(ii).

From a process standpoint, we urge EPA to be transparent and engage relevant stakeholders in the process of re-evaluating and revising the agency's Title VI regulations and interpretive guidelines.

We appreciate the effort with which EPA has responded to the Deloitte Consulting's Evaluation of the EPA Office of Civil Rights and how the Agency has proactively pushed forward EJ Plan 2014. Yet we remain concerned about the lack of transparency and involvement of the environmental justice community in the actual reform measures and potential regulatory amendments. We very much appreciate the willingness of the Administrator and senior EPA staff to meet with environmental justice leaders and advocates to hear our concerns and recommendations regarding EPA's enforcement of Title VI, but providing this opportunity to express our concerns has not yet led to involvement in the agency's actual reform efforts. The Title VI Supplement, as described above, only vaguely describes EPA's goals and activities regarding Title VI. As such, it is difficult to comment on the proposed activities when the Supplement describes them in such a vague, conclusory manner. For example, EPA only states that it will include stakeholder input in Activities 1.2 (post-award monitoring) and 1.4 (amending Title VI regulations) and proposes to include stakeholders' involvement—as necessary. Based on the Title VI Supplement, we remain concerned that there will be no further opportunity to participate in the majority of EPA's Title VI reform efforts, and that EPA will preclude the environmental justice community from the opportunity to participate in EPA's efforts to amend 40 C.F.R. part 7 until after EPA publishes proposed changes in the Federal Register. By that point, the Agency is likely to be committed to the course of action reflected in its proposal, and subsequent input from the environmental justice community is not likely to have much effect. Conversely, through proactive involvement of the environmental justice community, EPA will establish trust in, and earn respect for, EPA's efforts to ensure meaningful enforcement and implementation of the Civil Rights Act.

A robust Title VI enforcement program will require sustained attention and resources at what we understand to be a difficult time for EPA. Nonetheless, it is imperative that EPA demonstrate leadership by taking long overdue steps to make sure that federal dollars are not subsidizing discriminatory actions and that Title VI of the Civil Rights Act serves to prevent and address discrimination on the basis of race, color, and national origin. EPA must be clear with its recipients that they must comply with Title VI and other non-discrimination laws, and the enforcement program must reinforce this message with meaningful processes and remedies that prevent and remedy discriminatory actions. All of us, including EPA, must clearly state that we will no longer tolerate environmental—sacrifice zones, or areas where cumulative environmental insults have greatly degraded the quality of life in a defined area, disproportionately and adversely affecting people of color and low-income people. This is a bottom line, and all recipients—and OCR staff—must understand that actions with an unjustified discriminatory impact, such as adding yet another polluting source to an already overburdened community, are unacceptable and against the law.

Thank you for this opportunity to comment on the Title VI Supplement to Plan EJ 2014. Again, we appreciate your recognition of the importance of Title VI enforcement.

Sincerely,



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Exhibit 2

California Rural Legal Assistance Foundation * California Rural Legal Assistance, Inc. *
Center on Race, Poverty & the Environment * The City Project * Clean Water and Air Matter *
Communities for a Better Environment * Earthjustice * Eastern Environmental Law Center *
Environmental Justice League of Rhode Island * Equal Justice Society * Farmworker Justice *
Lawyers' Committee for Civil Rights Under Law * Los Jardines Institute (The Gardens Institute)
* Maryland State Commission on Environmental Justice and Sustainable Communities * Natural
Resources Defense Council * OPAL Environmental Justice Oregon * Pesticide Action Network
North America * Poverty & Race Research Action Council * Public Interest Law Center of
Philadelphia * Sierra Club * Tri-Valley CAREs * West End Revitalization Association *
Marc Brenman * Denny Larson * Gregg P. Macey

March 22, 2013

Via Electronic Mail

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Re: Comments on U.S. Environmental Protection Agency Draft Policy Papers, *Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Standards* (Released Jan 24, 2013); *Title VI of the Civil Rights Act of 1964: Draft Role of Complainants and Recipients in the Title VI Complaint and Resolution Process* (Released Jan. 25, 2013)

Dear Acting Administrator Perciasepe and the Office of Civil Rights,

The undersigned organizations and individuals submit these comments on two U.S. Environmental Protection Agency ("EPA") draft policy papers, EPA, Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Standards (Jan. 24, 2013) ("Adversity Paper"), and EPA, Title VI of the Civil Rights Act of 1964: Role of Complainants and Recipients in the Title VI Complaint and Resolution Process (Jan. 25, 2013)

(“Complainant Guidance”). The signatories include community groups that have filed Title VI complaints with the Office of Civil Rights (“OCR”) and have substantial experience with EPA’s failure to create and enforce a meaningful Title VI enforcement program. We note that many of the concerns outlined today echo the expansive set of comments submitted in response to the publication of Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39,650 (June 27, 2000) (hereinafter “Revised Guidance Documents”), and we refer OCR to the comments in the administrative record on the Revised Guidance Documents. Unfortunately, despite the passage of time and recent steps in the right direction, those comments remain relevant today.¹

Today’s comments are focused, particularly, on the Adversity Paper and the Complainant Guidance and address only a few of the issues that our organizations and partners have raised with EPA about strengthening the agency’s Title VI enforcement program and its compliance with Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Jan. 30, 1995) (the “Executive Order”). These include, for example, EPA’s failure to coordinate Title VI enforcement with other agencies, the need for EPA to incorporate the mandates of the Executive Order into its approach to Title VI enforcement, and concerns that complainants and other stakeholders face retaliation. A number of these issues are outlined in “Community Voice: Comments and Recommendations,” submitted to EPA on Wednesday, March 6, 2013 by Omega Wilson, West End Revitalization Association.

We strongly recommend that EPA develop and finalize a comprehensive guidance for implementing Title VI and its regulations, together with the Executive Order. While the piecemeal approach reflected in the two draft documents addresses a few isolated issues, a comprehensive guidance is needed to inform EPA staff, recipients of financial assistance, beneficiaries of such assistance, and the public as to their respective obligations and rights.²

¹ See, e.g., Ctr. on Race, Poverty, & the Env’t and Cal. Rural Legal Assistance Found., Comments on Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits and Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Aug. 26, 2000), *available at* http://www.epa.gov/civilrights/docs/t6com2000/t6com2000_071.pdf (“CRPE Comments”).

² See Fed. Transit Admin., U.S. Dep’t of Transp., FTA C 4702.1B: Title VI Requirements and Guidelines for Federal Transit Administration Recipients (Oct. 1, 2012), *available at*

We submit these comments with the hope that the agency has the will to take the additional necessary steps toward truly developing a “Model Civil Rights Program,” as the Final Report of the Civil Rights Executive Committee envisioned.³

I. The Adversity Paper

Title VI prohibits discrimination on the basis of “race, color, or national origin . . . under any program or activity receiving Federal financial assistance.”⁴ The text of the law explicitly directs each federal department and agency that extends federal financial assistance to effectuate the terms of the statute by issuing rules and regulations to carry out the objectives of the statute.⁵ As the Department of Justice (“DOJ”) has stated, “The purpose of Title VI is simple: to ensure that public funds are not spent in a way which encourages, subsidizes, or results in racial discrimination.”⁶ Toward that end, most federal agencies have adopted regulations that prohibit recipients of federal funds from using criteria or methods of administration that have the effect of subjecting individuals to discrimination based on race, color, or national origin.⁷

Consistent with other federal agencies, regulations promulgated by EPA in 1984 include the following prohibitions:

A recipient shall not use criteria or methods of administering its program or activity which *have the effect* of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

A recipient shall not choose a site or location of a facility that has the purpose or *effect* of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of

http://www.fta.dot.gov/legislation_law/12349_14792.html; Fed. Transit Admin., U.S. Dep’t of Transp., FTA C 4703.1: Environmental Justice Policy Guidance for Federal Transit Administration Recipients (Aug. 15, 2012), *available at* http://www.fta.dot.gov/legislation_law/12349_14740.html.

³ Civil Rights Exec. Comm., EPA, Developing a Model Civil Rights Program for the Environmental Protection Agency: Final Report (Apr. 13, 2012), *available at* http://www.epa.gov/epahome/pdf/executive_committee_final_report.pdf.

⁴ 42 U.S.C. § 2000d.

⁵ 42 U.S.C. § 2000d-1.

⁶ Civil Rights Div., DOJ, Title VI Legal Manual § VIII (2001), *available at* <http://www.justice.gov/crt/about/cor/coord/vimannual.php#I>.

⁷ *Id.*

race, color, or national origin or sex ; or with the purpose or *effect* of defeating or substantially impairing the accomplishment of the objectives of this subpart.⁸

EPA regulations, like regulations at other federal agencies, thus already explicitly prohibit actions with a disparate impact. The challenge is to create a strong enforcement program: despite pervasive patterns of inequality in the distribution of contaminated sites, for example, and the disproportionately greater exposure of communities of color to environmental hazards, Title VI enforcement has been noticeably absent.⁹

EPA's Adversity Paper is a welcome and significant attempt to clarify guidance documents that have languished in draft form for more than a decade. We welcome the movement forward, and particularly, the move away from a rebuttable presumption that absent non-compliance with environmental or health standards, EPA will not make a finding of adverse impact.¹⁰ At the same time, the Adversity Paper suffers from a number of critical shortcomings: (A) most fundamentally, it continues to relate a finding of adversity under Title VI to the question whether a recipient has complied with other statutory or regulatory standards, a connection that is neither consistent with Title VI nor workable for complainants or the agency, (B) the Adversity Paper makes no commitment to memorialize EPA's evolved position on the subject of "adversity" in a final guidance or other document, (C) it ignores non-permitting fact patterns and the importance of other stages of the investigative process, which remain poorly developed in the Revised Guidance Documents, (D) by creating new jurisdictional requirements, it imposes new barriers to filing complaints, and, finally, (E) we are concerned that EPA's statement that "the cooperative federalism approach embodied in the federal environmental statutes ... do[es] not have ready analogues in the context of other federal agencies' Title VI programs"¹¹ reflects confusion about EPA's role as the agency charged with ensuring that recipients of federal funds administered by EPA are not discriminating. Again, we also want to emphasize the need for EPA to develop and finalize a more comprehensive guidance for

⁸ 40 C.F.R. § 7.35(b), (c) (emphasis added).

⁹ As Luke W. Cole and Sheila R. Foster wrote, "[N]ational studies conducted to date provide evidence that people of color bear a disproportionate burden of environmental hazards, particularly toxic waste sites. Numerous local studies, with some exceptions, have, on the basis of their assessment of particular cities, counties or regions, similarly concluded that racial disparities exist on the location of toxic waste facilities." Luke W. Cole & Sheila R. Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* 58 (2001).

¹⁰ See Investigative Report for Title VI Administrative Complaint File No. 5R-98-R5 ("*Select Steel*")

¹¹ Adversity Paper at 1.

implementing Title VI and its regulations. Clarification of the adversity standard would be only one part of a final Title VI guidance.

(A) EPA's Continued Reliance on Statutory and Regulatory Environmental and Regulatory Health Standards for Determining Adversity is Inconsistent with Civil Rights Law and Infeasible.

In the Adversity Paper, EPA describes the post-*Sandoval* administrative complaint investigative process as “complex and unique,” due to the “need to merge the objectives and requirements of Title VI with the objectives and requirements of [] environmental laws.”¹² At the outset, EPA has built its analysis on the faulty premise that its Title VI enforcement obligations must “merge” with duties and authorities, despite the fact that they are derived from distinct statutes, with different purposes. As the Adversity Paper suggests, environmental laws require “complex technical assessments” of “emissions, exposures, and cause-effect relationships” as well as “close coordination.”¹³ The agency should be clear: EPA has an independent set of duties and obligations pursuant to civil rights law, including its responsibility to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*

The Adversity Paper nonetheless continues to tie the analysis of adversity to standards of environmental degradation and harm to health pursuant to other statutes, each itself the product of deliberation in light of independent statutory mandates and, therefore, makes only a minor commitment to change its approach to the adversity question. Regarding whether EPA should treat compliance with an environmental standard as triggering a rebuttable presumption of no adverse impact, EPA states that it “*may* need to consider whether a permit that complies with a health-based threshold can nevertheless cause an adverse impact.”¹⁴ Moreover, EPA backpedals from even this minor shift away from the rebuttable presumption in the very next sentence and elsewhere in the Adversity Paper. EPA states that its departure from the rebuttable presumption of no adverse impact¹⁵ may “involve analyses that are...simply infeasible,”¹⁶ is planned for “allegations about environmental *health-based* thresholds,”¹⁷ and will be used to focus on cases

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 3 (emphasis added).

¹⁵ See OCR, EPA, Investigative Report for Title VI Administrative Complaint File No. 5R-98-R5 (1998).

¹⁶ Adversity Paper at 3.

¹⁷ *Id.* at 4 (emphasis added).

“representing the *highest environmental and public health risk*.”¹⁸ EPA also reiterates its longstanding justification for the presumption of no adversity when health-based standards are met – it argues that compliance with standards means that “remaining risks are low and at an acceptable level.”¹⁹ And EPA declares that it has limited ability to gather “credible, reliable” data in the context of a given Title VI complaint.²⁰

Historically, EPA has interpreted its Title VI responsibilities and authorities through the lens of traditional environmental regulation—if the environmental statutes are complied with, according to this line of thinking, then there is adequate protection for communities. Simply put, this approach has failed to eliminate the adverse or disparate impacts to environmental justice communities that EPA’s Title VI regulations seek to forbid. We strongly urge EPA to move away from the traditional environmental regulatory approach and address Title VI issues through a civil rights lens. A final guidance should make clear that technical compliance with environmental laws is not the measure of whether programs or activities have an “adverse impact.” While the framework for assessing whether a recipient is in violation of the discriminatory effects standard in EPA’s Title VI implementing regulations includes a determination of whether the impact of a recipient’s programs or activities is both “adverse” and borne disproportionately by a group of persons based on race, color, or national origin, compliance with environmental laws and standards is not the ruler for civil rights compliance.

Title VI is a civil rights statute, and it is independent of environmental laws and standards. Before *Alexander v. Sandoval*, 532 U.S. 275 (2001), when cases of disparate impact were adjudicated in court, the threshold for establishing adverse impact was low.²¹ With rare

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.*

²⁰ *Id.* at 5.

²¹ The DOJ Title VI Legal Manual states, “Under the disparate impact theory, a recipient, in violation of agency regulations, uses a neutral procedure or practice that has a disparate impact on protected individuals, and such practice lacks a substantial legitimate justification. The elements of a Title VI disparate impact claim derive from the analysis of cases decided under Title VII disparate impact law.” Civil Rights Div., DOJ, Title VI Legal Manual § VIII.B (2001) (citing *N.Y. Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995)). Given the origin of the analysis, the precise quantification of impact was more relevant to remedy than the prima facie case. See, e.g., *Elston v. Talladega Cnty. Bd. of Educ.*, 997 F.2d 1394, 1420 (11th Cir. 1993) (“we believe that the zone-jumping of white students has increased the racial identifiability of the Training School . . . thus zone-jumping may be said to have produced a disparate impact on black students in Talladega County”); *Larry P. v. Riles*, 495 F. Supp. 926, 941-42 (N.D. Cal. 1979) *aff’d in part, rev’d in part sub nom. Larry P. By Lucille P. v. Riles*, 793 F.2d 969 (9th Cir. 1984) (improper placement in so-called educable mentally retarded classes has a definite adverse effect, in that such classes are dead-end classes that de-emphasize academic skills and stigmatize children improperly placed in them).

exception, the crux of the inquiry focused on whether or not the impact was felt disproportionately on the basis of race or national origin, not on the magnitude of the impact itself.²² In one of the few cases to question whether plaintiffs had established the impact prong of the *prima facie* case, *U.S. v. Bexar Cnty.*, 484 F. Supp. 855, 859-60 (W.D.Tex. 1980), the court was concerned about whether traveling for what the court presumed would be superior health care once a hospital facility moved from an urban center to the suburbs constituted cognizable harm, not whether the level of impact met a technical standard imposed by the U.S. Department of Health & Human Services or pursuant to another statute.²³

In particular, the final guidance should remove any confusion caused by *Select Steel*. Compliance by recipients with standards adopted pursuant to the Clean Water Act, Clean Air Act, or other environmental laws does not mean that persons are not adversely affected by the recipients' programs or activities. Environmental statutes, regulations, and standards are the outcome of political and administrative processes, which take account of an array of competing interests and criteria. As was the case with *Select Steel*, these standards may involve averaging emissions over large geographical areas that, if viewed in isolation, can hide disparities. They are, again, not the benchmark for a determination of "impact." Among other things, environmental standards do not fully capture harms to public health and the environment. These standards change over time, for instance.²⁴ Many health-based standards are not currently implemented (particularly in the area of toxic pollutants), and existing standards are rarely updated to account for the progress of science.²⁵

²² See Alan Jenkins, *Title VI of the Civil Rights Act of 1964: Racial Discrimination in Federally Funded Programs*, in *Civil Rights Litigation and Attorney Fees Annual Handbook* 186 (B. Wolvovitz et al. eds. 1995).

²³ Indeed, as many of the signatories have previously emphasized, the standard for measuring impact is "adversity," not "significant" adverse impact, as the Revised Guidance Documents would suggest. Analysis of significance has traditionally been applied to the question of disproportionality. See, e.g., *Campaign for Fiscal Equity v. State*, 187 Misc. 2d 1, 101-102 (N.Y. Sup. Ct. 2001) (New York court applying Title VI analysis in school equity case finding that "money is a crucial determinant of educational quality" and turning to statistical analysis of the disproportionality of the impact.).

²⁴ See *In re Shell Gulf of Mexico, Inc.*, 2010 WL 5478647 (EAB 2010). In *Shell*, the Environmental Appeals Board concluded that EPA erred when it relied solely on compliance with the then-existing annual NO₂ National Ambient Air Quality Standard ("NAAQS") as sufficient to find that the Alaska Native population would not experience "adverse human health or environmental effects from the permitted activity." *Id.* at *2. Though this decision arose in the context of Executive Order 12898 and turned on the fact that the NAAQS was under revision, it is clear that current compliance with an environmental standard is not determinative of whether an action or policy has a health impact.

²⁵ See, e.g., Lynn E. Blais & Wendy E. Wagner, *Emerging Science, Adaptive Regulation, and the Problem of Rulemaking Ruts*, 86 Tex. L. Rev. 1701, 1721 -1725 (2008) (standards such as new source performance standards

We note, also, that the Revised Guidance Documents already contain some language clarifying that “[c]ompliance with environmental laws does not constitute per se compliance with Title VI.” 65 Fed. Reg. at 39,680. Though the move away from the rebuttable presumption is a step in the right direction, the continued reliance on environmental laws is in error. Noncompliance with an environmental or health standard is relevant to a finding of adverse impact, but compliance with a federal, state, or local standard does not negate otherwise valid evidence of adversity.

EPA’s continued reliance on environmental standards also poses the following problems. First, the Revised Guidance Documents erred when limiting cognizable harms to those within EPA’s or a recipient’s expertise or “authority”²⁶ by not requiring “recipients to address social and economic issues that they are not authorized to address.”²⁷ The Adversity Paper fails to reverse these errors. As many of the undersigned emphasized in 2000, such an approach ignores the many aesthetic, cultural, economic, and social impacts experienced by communities.²⁸ For example, the approach leaves out odor, segregatory effects, and interference with enjoyment of property, as well as other economic impacts, such as the effect of polluting sources on property values. An analysis of whether a recipient’s action, policy, or practice has an adverse impact cannot ignore such a broad swath of impacts.²⁹ We are deeply concerned that the Adversity Paper continues a policy of willfully choosing to ignore real impacts affecting communities.

Notably, Title VI prohibits recipients from excluding, denying the benefits of a program or activity, or subjecting people to discrimination on the basis of race, color, or ethnicity.³⁰ The

under the Clean Air Act and effluent standards under the Clean Water Act are on average twenty years old, more than fifty percent have never been revised, and most others have been revised once).

²⁶ 65 Fed. Reg. at 39,670 (“[I]n determining whether a recipient is in violation of Title VI or EPA’s implementing regulations, the Agency expects to account for the adverse disparate impacts... within the recipient’s authority.”).

²⁷ *Id.* at 39,691. See Letter from Center on Race, Poverty and the Environment and Other Environmental Justice Organizations and Individuals to Carol Browner and Anne Goode, EPA (Aug. 26, 2000) (calling for EPA to consider social, cultural, and economic impacts of recipient actions) (hereinafter “Letter to Carol Browner”).

²⁸ CRPE Comments at 47-48.

²⁹ OCR adopted this narrow approach, for example, in *Padres*. See OCR, EPA, Investigative Report for Title VI Administrative Complaint, File No. 01R-95-R9 69-70 (Aug. 30, 2012) (finding that the recipient did not have authority to address a range of impacts and, thus, discounting any such impacts in the adversity analysis). An analysis of the *adverse impacts* of a recipient’s action is conceptually distinct from whether it would be outside of a recipient’s authority to mandate a particular remedy, which might be relevant to the content of a voluntary compliance agreement but should not limit the adversity analysis.

³⁰ 42 U.S.C. § 2000d.

statutory language contemplates the full range of potential impacts — including, for example, acknowledging that a segregatory effect is a cognizable form of injury. The Adversity Paper should make clear that adverse impacts may involve harms to health, damage to the environment, reduction in property values, and social harms, among others, and are not limited to measurable environmental or health effects. In addition, the investigation of adverse impacts should not be constrained by gaps in scientific knowledge about exposure, exposure pathways and health effects, or more broadly, the expertise of EPA or the recipients.³¹ Evidence of any adverse impact is relevant to a finding of discrimination.

Second, the Adversity Paper does not change the “hierarchy” of data on adverse impacts developed in the Revised Guidance Documents. In those guidance documents, EPA stated that “data may not be readily available for many types of impacts,” and created a hierarchy of existing data that OCR would use to determine adversity: (1) ambient monitoring data, (2) modeled exposure concentrations or surrogates, (3) known releases of pollutants or stressors, (4) quantities of chemicals and their potential for release, and (5) the existence of certain sources or activities.³² It remains unclear how this hierarchy of *existing* data will influence OCR’s attempt to use all “readily available and relevant data.”³³ There is no mention of OCR’s view on the relevance of citizen monitoring data, or local knowledge that may be less quantifiable than the data at the top of OCR’s hierarchy.³⁴

³¹ The Revised Guidance Documents contain additional language that may be interpreted as limiting analysis of effects to a subset of impacts and requires clarification. See, e.g., 65 Fed. Reg. at 39,660 (in a section entitled “Relevant Data,” the Revised Guidance Documents lay out an “order of preference” of relevant data to be used to conduct the analysis of adverse impact. The list starts with “[a]mbient monitoring data” and “[m]odeled ambient concentrations.” Notably, the list does not specifically identify outcome data —for example, high asthma or cancer rates. The list itself and the prioritization of items on the list reinforce an impression that a finding of adverse impact is contingent on environmental laws and standards and, also, that non-environmental harms will be ignored.); 65 Fed. Reg. at 39,661 (“Generally, the risk or measure of impact should first be evaluated and compared to *benchmarks* provided under relevant environmental statutes, regulations or policies.”); 65 Fed. Reg. at 39,680 (The “[e]xample of adverse impact benchmarks,” relies on hazard indices that are developed for other purposes and should not be the markers for identifying adverse impacts under Title VI); 65 Fed. Reg. at 39,680 (“[W]here the area in question is attaining that [NAAQS] standard, the air quality in the surrounding community will generally be considered presumptively protective and emissions of that pollutant should not be viewed as ‘adverse’ within the meaning of Title VI.”). The Adversity Paper should clarify that while violations of environmental standards are evidence of harm, lack of such data does not negate other indicia or evidence of impact.

³² *Id.* at 39,679.

³³ *Id.* at 39,660.

³⁴ See Jill Lindsey Harrison, *Pesticide Drift and the Pursuit of Environmental Justice* 115 (2011) (“defining an issue as belonging in the realm of science rather than politics ... is attempting to remove the issue from public debate”; to do so obscures data gaps, industry privilege, and other material factors that minimize official assessments of the problems such as pesticide drift, which disproportionately affects Latino farmworkers and their families). We note

Third, in light of EPA's concerns about its capacity and the availability of existing data, the approach to evaluating adverse impact suggested by the Adversity Paper is impracticable. EPA notes that in deciding whether a permit is in compliance with health-based standards, OCR may consider the "existence of hot spots, cumulative impacts, the presence of particularly sensitive populations...misapplication of environmental standards, or the existence of site-specific data demonstrating an adverse impact."³⁵ But the Paper then indicates that compliance with ambient standards will under a variety of circumstances continue to operate as a presumption of no adverse impact, because "the Agency's existing technical capabilities and the availability of credible, reliable data" "may impact EPA's ability to consider other information concurrently with compliance with health-based thresholds."³⁶ In fact, if EPA continues to rely on such standards to measure adversity, it has a variety of platforms available that can provide, at reasonable cost, near-real-time, ground-level spatial data on emissions from permitted facilities. Its VIPER wireless system, for example, is in use throughout the country, and can be set up on short notice to gather new data on facility grounds or within residential communities through use of handheld sensors.³⁷ The agency could deploy these systems to gather baseline data at permitted facilities and ensure that increases over baseline do not pose a risk to public health. And it could partner with a variety of organizations, including other agencies such as the Centers for Disease Control and Prevention, to gather baseline biomonitoring data from residents who may be exposed to new emissions.³⁸ Such data are relevant for other existing programs administered by the agency, including EPA's Risk and Technology Review program that promulgates industry-specific residual risk standards based on maximally exposed individuals

that devaluing the experience of affected communities and anecdotal information has been a longstanding environmental justice concern. Moreover social issues like poverty, language barriers, and legal obstacles make environmental justice problems such as pesticide drift "more difficult to accurately quantify." *Id.* at 30.

³⁵ Adversity Paper at 4.

³⁶ *Id.* at 5.

³⁷ EPA, VIPER Wireless Monitoring, Presentation at VIPER Data Workshop (Dec. 21, 2011); *see also* Evaluate Air Sensors Developed During EPA's Air Sensor Evaluation and Collaboration Event, EPA, www.epa.gov/nerl/features/sensors.html (last updated Dec. 18, 2012).

³⁸ *See, e.g.,* Ctrs. for Disease Control and Prevention, Dep't of Health and Human Servs., Third National Report on Human Exposure to Environmental Chemicals (2005); Rachel Morello-Frosch et al., *Toxic Ignorance and Right-to-Know in Biomonitoring Results Communication: A Survey of Scientists and Study Participants*, 8 *Env'tl. Health* 1 (2009).

near permitted facilities.³⁹ Given these and other capabilities, OCR’s claim that it “expects to gather pre-existing technical data rather than generating new data”⁴⁰ seems inapposite. Without new data, meaningful investigations are likely to be stymied. OCR should commit to make use of all resources available to EPA, especially those that are cost-effective (such as wireless sensors and bio-monitoring).

Moreover, as discussed below, to the extent that technical capabilities for establishing a baseline and/or evaluating the cumulative impacts, the presence of particularly sensitive populations, misapplication of environmental standards, or a site-specific demonstration of other adverse impact are, in fact, inadequate, such limitations should not preclude a finding of adversity. The agency proposes to create too high a burden, based on another set of laws and regulations, rather than determining whether there is an adverse impact on the basis of race, color or national origin. The lack of such data on contamination affecting overburdened communities is a reflection of long-standing societal priorities, which, if allowed to defeat a finding of adversity, perpetuates discriminatory patterns. Given constraints on resources, it is neither realistic nor reasonable to expect complainants to hire the experts and pull together the data that the government has failed to collect. And with thousands of grantees, and thousands of sub-grantees,⁴¹ EPA cannot feasibly build a Title VI enforcement program working on the premise that each investigation would have to meet this high a burden on the issue of adversity. Both the Revised Guidance Documents and the Adversity Paper raise the bar for a demonstration of adversity beyond the realm of feasibility, so that it will largely be out of reach for low-income communities of color that experience the disproportionate burden of contamination.

Fourth, to the extent that a finding of adversity remains tethered to environmental and health-based standards, the Adversity Paper fails to clarify whether OCR will rely on risk-based proxies for “adverse” impacts caused by a recipient of agency funds. How will EPA use thresholds (e.g., cancer risks of less than one in one million or non-cancer risks of less than one on the hazard index) to determine “adversity”? Will the agency consider impacts “not adverse”

³⁹ 42 U.S.C. § 7412(f)(2)(A).

⁴⁰ Adversity Paper at 5.

⁴¹ See Prime Award Spending Data: EPA, USA Spending, http://www.usaspending.gov/?tab=By+Agency&fromfiscal=yes&fiscal_year=2013&overridecook=yes&carryfilters=on&q=explore&maj_contracting_agency=6800&maj_contracting_agency_name=Environmental+Protection+Agency.

if they are lower than those thresholds?⁴² How will risks above those thresholds be determined to be “adverse”? Under what circumstances will EPA view differential exposure an “adverse” impact for purposes of making a *prima facie* finding of a Title VI violation? And how will it combine risk-based determinations with assessments of other health- and non-health-related stressors from a permitted facility’s operations as well as departures from normal operations?

(B) The Adversity Paper Makes No Commitment to Memorialize EPA’s Position in a Final Guidance and is Likely to Create Confusion for Recipients, Stakeholder Communities, and Investigators.

The Adversity Paper states, “Upon finalization of this paper, the policy described herein will supersede the corresponding discussions” in the Draft Revised Investigation Guidance.⁴³ A robust Title VI compliance program requires that EPA finalize guidelines to ensure clarity, transparency, standardization, and accountability. The footnote leaves vague the relationship between this new policy, for example, and the Draft Recipient Guidance. Moreover, by addressing legal standards one at a time, and then memorializing them in multiple documents, EPA is creating unnecessary complexity for communities, recipients, and investigators.

(C) The Adversity Paper Represents Part of a Piecemeal Approach to Addressing Longstanding Problems with EPA’s Legal Standards and Fails to Address Either Non-Permitting Fact Patterns or The Fact That Other Stages in the Investigative Process Remain Poorly Developed.

EPA limits the scope of the Adversity Paper to the question of “adversity,” a single step in its framework for analyzing Title VI claims for only one kind of decision by a recipient of federal funds: the decision to issue or renew an environmental permit. EPA’s failure to address the standard for assessing adversity in “most non-permitting fact patterns” can only lead to additional confusion and conflict about the appropriate standard to apply in these other contexts.⁴⁴

⁴² 65 Fed. Reg. at 39,680.

⁴³ Adversity Paper at 1 n.1.

⁴⁴ In 2000, many of the signatories to this letter raised concern about EPA’s failure to address the range of activities conducted by recipients of federal financial assistance that implicate Title VI, including, for example the clean-up of contaminated sites and the enforcement (or lack of enforcement) of environmental laws. See CRPE Comments at 10.

Moreover, EPA makes clear that it chose to focus its attention on only a narrow portion of the investigative process: “This paper focuses only on a particular issue...described in step 1.a. [’Does the alleged discriminatory act have an adverse impact?’].”⁴⁵ Apart from clarifying a limited set of circumstances that may lead to a finding of adverse impact, EPA ignores the remainder of the investigative process for establishing a *prima facie* Title VI violation in the Adversity Paper, offering that “[o]ther[steps] may require elaboration in the future.”⁴⁶ This statement reveals a lack of institutional memory, which will limit EPA’s ability to competently reform its Title VI process.⁴⁷ Over more than ten years, comments filed before the agency, widely-cited journal articles in the wake of *Select Steel*, arguments in litigation against EPA, and findings of a federal advisory committee *convened* by EPA raised and repeated concerns with every stage of the investigative process.⁴⁸

For example, the Adversity Paper leaves in place a lack of clarity about what constitutes a sufficient “substantial legitimate justification” to rebut a *prima facie* case of discrimination and the standards for evaluating less discriminatory alternatives. The Revised Guidance Documents call for a recipient’s decision to be “reasonably necessary to meet a goal that is legitimate, important, and integral to the recipient’s institutional mission.”⁴⁹ Yet there is confusion about which goals are “integral” to a recipient’s mission. In the Revised Guidance Documents, EPA states that OCR will administer this test by “likely consider[ing] broader interests, such as economic development.”⁵⁰ As Professor Eileen Gauna has suggested, the tension between the requirement that a goal must be “integral” to a recipient’s mission and this “broader” approach

⁴⁵ Adversity Paper at 3.

⁴⁶ *Id.*

⁴⁷ See Deloitte Consulting LLP, Evaluation of the EPA Office of Civil Rights (Mar. 21, 2011), *available at* http://www.epa.gov/epahome/pdf/epa-ocr_20110321_finalreport.pdf.

⁴⁸ See, e.g., Nat’l Advisory Council for Env’tl. Policy and Tech., Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs (1999); Luke W. Cole, *Wrong on the Facts, Wrong on the Law: Civil Rights Advocates Excoriate EPA’s Most Recent Title VI Misstep*, 29 Env’tl. L. Rep. 10,775 (1999); Bradford C. Mank, *The Draft Recipient Guidance and the Draft Revised Investigation Guidances: Too Much Discretion for EPA and a More Difficult Standard for Complainants?*, 30 Env’tl. L. Rep. 11,144 (2000); Eileen Gauna, *EPA at 30: Fairness in Environmental Protection*, 31 Env’tl. L. Rep. 10,528 (2001) (hereinafter “*EPA at 30*”); *Padres Hacia Una Vida Mejor v. Jackson*, No. 1:11-cv-1094, 2013 WL 459289 (E.D. Cal. Feb. 5, 2013).

⁴⁹ 65 Fed. Reg. at 39,654.

⁵⁰ *Id.*

creates an area of uncertainty.⁵¹ The Revised Guidance Documents also fail to provide clarity on the circumstances under which EPA will consider cost a substantial legitimate justification or a sufficient reason to reject a less discriminatory alternative, stating only “OCR will likely consider cost and technical feasibility in its assessment of the practicability of potential alternatives.”⁵² A recipient’s ability to justify disparate impacts by appealing to broader economic interests will sharply limit Title VI enforcement. The signatories to this letter urge EPA to close this loophole and adopt a more appropriate standard of justification.

(D) The Adversity Paper Indicates That Complaints Are Screened for Standing and Ripeness, Imposing New Barriers to Title VI Enforcement.

Footnote 8 of the Adversity Paper indicates that EPA’s jurisdictional review of complaints includes a screening for standing and ripeness, imposing new and unnecessary barriers to Title VI enforcement. The doctrine of standing, for example, serves to set apart cases and controversies that are justiciable and properly before the courts.⁵³ A plaintiff in federal court must meet a three-part test requiring demonstration of (1) injury in fact, (2) a causal connection between the injury and conduct that is the source of the complaint, and (3) redressability, i.e. that the injury can be redressed by the outcome of the court’s decision.⁵⁴ There is no standing requirement to file an administrative complaint under Title VI. Indeed, EPA’s regulations state that a person may file a complaint if he or she “believes that he or she *or a specific class of persons* has been discriminated against in violation of this part.”⁵⁵ There is no prerequisite that the complainant suffer direct or personal injury in fact, economic or otherwise, or be a member, representative, or organization representing a class of persons that suffers such harm. Pursuant to the Administrative Procedures Act, standing is *only* necessary when seeking judicial review, not when filing an administrative complaint or participating in the informal adjudication process.⁵⁶ Though the Adversity Paper asserts that the EPA, as well as other federal agencies,

⁵¹ *EPA at 30, supra* note 48, at 10,548.

⁵² 65 Fed. Reg. at 39,683.

⁵³ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

⁵⁴ *Id.* at 560-61.

⁵⁵ 40 C.F.R. § 7.120(a).

⁵⁶ 5 U.S.C. § 551, *et. seq.*

has discretion in the enforcement of federal statutes, including how it elects to enforce Title VI,⁵⁷ any such discretion should not be exercised by the agency to add extra impediments to filing a viable complaint for an already overburdened, under-resourced, potential complainant. A new standing requirement further tips the scale in favor of the recipient by increasing the risk of discriminatory actions going unnoticed, and consequently unmitigated, at the expense of the health of many Americans.

Similarly, EPA's statement that its jurisdictional review includes a screening for "whether the complaint is ripe" also frustrates the goal of inclusive, comprehensive stakeholder involvement.⁵⁸ In *Angelita C*, EPA unambiguously stated that the showing of *potential* health effects (depending on their nature and severity) is an adequate basis not just for filing a complaint, but also for a finding of adverse impact.⁵⁹ The agency noted that a reasonable cause for concern, and correspondingly, a reasonable basis for filing a complaint based on that concern for public health or welfare can be evidenced in the establishment of an *imminent*, substantial harm or endangerment in a complaint:

...the decisional precedent demonstrates that an endangerment is substantial if there is reasonable cause for concern that someone or something may be exposed to a risk of harm by a release or a threatened release of a hazardous substance if remedial action is not taken, keeping in mind that protection of the public health, welfare and the environment is of primary importance.⁶⁰

Imminent harm can be shown before a regulation or action is enforced. If a complainant knows that a law or action is forthcoming, that should be a reasonable enough cause for concern to file a complaint before the law or regulation is enacted. Because a complaint is not a request for judicial review, but rather a request that something be done before judicial review is necessary, EPA should loosen instead of tighten the requirements for filing a complaint in order to encourage resolution without the expense and time of going to court. As mentioned earlier, Title VI complainants typically have far fewer resources to devote to judicial proceedings than recipients of federal funds.

⁵⁷ Adversity Paper at 2.

⁵⁸ See Adversity Paper at 2 n.8.

⁵⁹ OCR, EPA, Investigative Report for Title VI Administrative Complaint File No. 16R-99-R9 (2011).

⁶⁰ *Id.* at 27.

EPA applied a ripeness standard in its decision to dismiss without prejudice *Coalition for a Safe Environment v. California Air Resources Board*, EPA File No. 09R-12-R9.⁶¹ In *Safe Environment*, California community groups with members living in close proximity to facilities governed by California's greenhouse gas cap-and-trade program alleged that the California Air Resources Board violated Title VI by allowing carbon trading, which denied overburdened populations the benefit of co-pollutant reductions in their communities.⁶² *Safe Environment* alleged that the recent adoption of cap-and-trade inflicted imminent adverse impacts consistent with the *Angelita C.* preliminary finding and the Clean Water Act Enforcement Guidance.⁶³ EPA dismissed the complaint on ripeness grounds, stating:

OCR finds that this complaint is not ripe for review. The allegations in the complaint are speculative in nature and anticipate future events that may not occur. The actions to be taken in response to the new compliance obligations and the results of those actions are unknown and unpredictable. As a result, a meaningful review cannot be conducted at this time. Therefore, OCR rejects your complaint and its allegations.⁶⁴

The Complainants sought reconsideration given EPA's conclusory rejection.⁶⁵ Six months later and just *two days after* EPA proposed the Adversity Paper, including footnote 8, EPA responded to the *Safe Environment* petition.

Like the Complaint, your request lacks specific information that CARB either discriminated against "communities of color" in promulgating the Cap and Trade program, or that their actions in taking the preparatory steps to initiate the Cap and Trade program have resulted in harm to the complainants, either at the time the complaint was filed or now. Moreover, your request did not include any facts about the actual, real-world implementation of the program that would help to assess whether adverse, disparate impacts will occur.⁶⁶

⁶¹ See Letter from Rafael DeLeon, Dir., OCR, to Brent Newell and Sofia Parino, Ctr. on Race, Poverty & the Env't. (July 12, 2012,) attached as Exhibit xxxx; Letter from Rafael DeLeon, Dir., OCR, to Brent Newell and Sofia Parino, Ctr. on Race, Poverty & the Env't. (Jan. 25, 2013).

⁶² See *Coalition for a Safe Environment v. California Air Resources Board*, EPA File No. R09-12-R9, filed June 8, 2012.

⁶³ *Id.* at 9-16.

⁶⁴ See Letter from Rafael DeLeon, Dir., OCR, to Brent Newell and Sofia Parino, Ctr. on Race, Poverty & the Env't. at 2 (July 12, 2012).

⁶⁵ See Letter from Brent Newell, Ctr. on Race, Poverty & the Env't., to Rafael DeLeon, Dir., OCR (Aug. 6, 2012).

⁶⁶ Letter from Rafael DeLeon, Dir., OCR, to Brent Newell and Sofia Parino, Ctr. on Race, Poverty & the Env't. at 2 (Jan. 25, 2013).

EPA's implementation of footnote 8 in *Safe Environment* demonstrates that EPA is radically altering the timing of when a complainant must file a complaint, shifting the burden of proof to the complainant, and imposing an "actual harm" threshold from the implementation of a discriminatory act. First, complainants have only 180 days to file a Title VI complaint, or EPA routinely dismisses such complaints without invoking its authority to investigate a complaint on its own prerogative.⁶⁷ Under *Safe Environment* and footnote 8, a complainant must not only track when the act of the recipient took place, but also wait until the ax falls. The decision hints that, in the case of a regulatory program, a complainant must obtain knowledge of the specific date or dates of a recipient's implementation of that program and evidence of resulting harm to the complainants. Many regulatory programs have multiple stages of implementation, as regulations frequently phase in compliance obligations. EPA has thus injected significant uncertainty into the key date from which a short statute of limitations begins to run.

Second, during that short statute of limitations period with an uncertain beginning, a complainant now seems to bear the burden of proof in demonstrating actual harm to EPA. This reflects, again, a radical departure from the last two decades of Title VI enforcement,⁶⁸ and allows EPA to dismiss complaints on procedural grounds without expending resources on costly investigations. In implementing this policy, EPA could determine that a complainant has not met its threshold burden to demonstrate harm, regardless of the allegations in the complaint.⁶⁹ As EPA recognized in the Revised Guidance Documents, it is EPA, not the complainants, who should investigate and determine whether or not a recipient of federal funding is discriminating.

EPA should abandon its proposed stance toward, and recent application of, standing and ripeness, because such EPA determinations do not further the enforcement of civil rights or environmental justice, obligations EPA has under the law and the Executive Order, but rather

⁶⁷ EPA's Title VI regulations make clear that the agency has affirmative authority to enforce Title VI, authority that is not limited to responding to complaints: "The OCR may periodically conduct compliance reviews of any recipient's programs or activities receiving EPA assistance, including the request of data and information, and may conduct on-site reviews when it has reason to believe that discrimination may be occurring in such programs or activities." 40 C.F.R. § 7.115(a).

⁶⁸ See 65 Fed. Reg. at 39672 (June 27, 2000) (" . . . [T]he complainants do not have the burden of proving that their allegations are true, although their complaint should present a clearly articulated statement of the alleged violation. It is OCR's job to investigate allegations and determine compliance.")

⁶⁹ The complaint in *Safe Environment* included extensive allegations, supported by fact, of disparity and adversity. See *Coalition for a Safe Environment v. California Air Resources Board* at 9-28, EPA File No. R09-12-R9, filed June 8, 2012.

place complainants in untenable positions against powerful agencies and sometimes insurmountable burdens of proof merely to file a complaint.

Moreover, if potential complainants do in fact fall into the category of what EPA has called “tipsters,” discussed below at Part II.A, and are not aggrieved persons, directly affected by the recipient’s action, then requiring ripeness, much less standing, can have a chilling effect on the possibility that they will speak up against a harm that may have a devastating impact on others in their communities. Thus to require ripeness before a person can file a complaint is unduly burdensome and possibly unjust for far too many people who are potentially impacted, and goes against the EPA’s past practices and self-declared value of inclusivity of all stakeholders, making an already historically difficult and challenging process that much harder.

With this in mind, we hope the agency will remove references to jurisdictional review of standing and ripeness in any final version of the adversity guidance.

(E) Notwithstanding EPA’s Other Duties and Authorities, the Agency is Charged with Enforcing Title VI and Must Have the Political Will to Ensure Compliance, Even in the Context of Cooperative Federalism.

We support the dual importance of robust discrimination protections and effective governance, which should both constructively inform Title VI policies. In particular, administrative enforcement has the highest potential for success when agencies build on each other’s experience and on the resources already invested in developing best practices. For this reason, we were glad that EPA noted the importance of continuing “to review programs and best practices in place in other federal agencies to ensure consistency to the extent applicable and identify approaches that may be transferable to EPA’s Title VI program.”⁷⁰

However, we recommend that the final guidance take a more proactive and rigorous stance in seeking to match the best Title VI practices developed by other agencies,⁷¹ as well as striving for EPA to itself become a model. We hope that EPA will take concerted steps to identify elements of Title VI enforcement frameworks that have been maximally effective in ensuring that federal assistance does not reinforce or support discrimination—and will adapt those to be even more effective in the environmental regulatory context.

⁷⁰ Adversity Paper at 1 n.3.

⁷¹ In particular, we commend the Title VI guidance documents developed by the Federal Transit Administration as one example. *See, e.g.*, discussion *infra* note 83, at 22.

The Adversity Paper, in contrast, reflects an overly hesitant approach that undermines the value of cross-agency resources. In particular, the Adversity Paper guidance states:

The Agency has encountered a number of complex and unique issues of law and policy in the course of Title VI complaint investigations, especially allegations concerning the protectiveness of environmental permits issued by state and local agencies that receive EPA financial assistance. These challenges have been the consequence of the need to merge the objectives and requirements of Title VI with the objectives and requirements of the environmental laws that the Agency implements. The Agency's environmental regulatory mandates require complex technical assessments regarding pollution emissions, exposures, and cause-effect relationships. In addition, the cooperative federalism approach embodied in the federal environmental statutes requires that EPA accomplish its environmental protection objectives in close coordination with state and local environmental regulators. Such issues do not have ready analogues in the context of other federal agencies' Title VI programs.⁷²

We appreciate that each agency, including EPA, encounters unique challenges in Title VI program design. However, the tone of EPA exceptionalism set by this draft paragraph raises concerns that the guidance will foster a defeatist perspective toward efforts to mine other agencies' successes, as well as suggesting a relatively low standard for EPA's Title VI performance.

We address below the specific issues raised by this draft paragraph, but we would also emphasize that its premise runs contrary to fundamental Title VI objectives. While agencies must adapt Title VI procedures and enforcement to the fields they regulate (and the specific burdens and benefits encountered there), the legislation was clearly not intended to yield a tiered model in which some agencies incorporate its directives less fully than others due to inflexible program design or existing agency-recipient dynamics. Rather, Title VI was intended as a consistent and overarching mandate that the government divest itself of discrimination across all programs and activities: a way to “insure the uniformity and permanence to the nondiscrimination policy” and avoid a piecemeal approach.⁷³ Indeed, the challenges of federalism gave rise to civil rights laws, including Title VI, and are endemic to civil rights enforcement. Many of the pioneering Title VI cases, for example, brought to desegregate school systems throughout the country, carried this crucial federal prohibition against discrimination

⁷² *Id.* at 1.

⁷³ See 110 Cong. Rec. 6544 (1964) (statement of Sen. Humphrey).

into traditional spheres of state and local control.⁷⁴ As the Fifth Circuit Court of Appeals stated in one such case, “Congress decided that the time had come for a sweeping civil rights advance, including national legislation to speed up desegregation of public schools and to put teeth into enforcement of desegregation.”⁷⁵ Citing legislative history, the Court continued:

[T]itle VI is designed as a step toward eradicating significant areas of discrimination on a nationwide basis. It is general in application and national in scope.... It is not healthy nor right in this country to require the local residents of a community to carry the sole burden and face alone the hazards of commencing costly litigation to compel school desegregation. After all, it is the responsibility of the Federal Government to protect constitutional rights [such as those undergirding Title VI].⁷⁶

Given the inequitable distribution of environmental hazards on the basis of race, color, and national origin across the United States, and the devastating effects of contamination, including the impact of exposure to carcinogens, neurotoxins, endocrine disruptors, and other health hazards, the mandate of the federal government is no less crucial today.⁷⁷

This message was reinforced by Executive Order 12898, which heightened the procedural requirements for many agencies, including EPA, and called for increased cross-agency collaboration.⁷⁸ The hazards of discrimination are certainly no less important in the environmental sphere than elsewhere, and equal or greater safeguards are merited.

More specifically, this section of the Adversity Paper posits that the technical nature of environment regulation, and the priorities set by the cooperative federalist scheme, may prevent EPA from importing strong Title VI standards or setting its own. Yet other agencies face comparable challenges. EPA’s fellow agencies also grapple with an intricate range of statistical assessments, causality determinations, competing mandates, unclear valuations, and injury predictions. These agencies must evaluate potential health, economic, and other impacts that may require complex determinations.

⁷⁴ See, e.g., *United States v. Jefferson Cnty. Bd. Of Educ.*, 372 F.2d 836 (5th Cir. 1966), *aff’d on reh’g*, 380 F.2d 385 (5th Cir. 1967).

⁷⁵ *Id.* at 849.

⁷⁶ *Id.* at 849 n.17, citing House Judiciary Committee Report No. 914, to Accompany H.R. 7152, 2 U.S. Code Congressional and Administrative News, 88th Cong. 2nd Sess. 1964, at 2393.

⁷⁷ For an annotated bibliography of studies and articles documenting the disproportionate impact of environmental hazards on the basis of race and/or income, see Cole and Foster, *supra* note 9, at 167-83.

⁷⁸ See Exec. Order No. 12898, 59 Fed. Reg. 7629 (Jan. 30, 1995).

The challenges posed by cooperative federalism are not native only to environmental regulation. Federal programs such as Medicaid, for instance, are federal-state partnerships, and Medicaid is administered by state agencies.⁷⁹ Additionally, numerous other agencies must navigate relationships with recipients whom they both oversee and rely upon—both for the oversight of sub-recipients and for the implementation of other critical programs. For example, the U.S. Department of Housing and Urban Development (“HUD”) is charged with the compliance of state and local housing and community development agencies, which administer block grants as well as subsidies.⁸⁰

Federal-state partnerships of all kinds exist across federal agencies, and other federal agencies that enforce Title VI also wear multiple hats. For example, federally assisted transportation recipients must attend to the racially disparate effects of transit service plans, fare policies, and environmental and social benefits and burdens.⁸¹ The Federal Transit Administration has identified objectives for Title VI evaluations encompassing the need to:

- a. Ensure that the level and quality of transportation service is provided without regard to race, color, or national origin;
- b. Identify and address, as appropriate, disproportionately high and adverse human health and environmental effects, including social and economic effects of programs and activities on minority populations and low-income populations;
- c. Promote the full and fair participation of all affected populations in transportation decision making;
- d. Prevent the denial, reduction, or delay in benefits related to programs and activities that benefit minority populations or low-income populations;
- e. Ensure meaningful access to programs and activities by persons with limited English proficiency.⁸²

⁷⁹ See, e.g., *Frazier v. Bd. of Trustees of Nw. Miss. Reg'l Med. Ctr.*, 765 F.2d 1278 (5th Cir. 1985), *modified on other grounds*, 777 F.2d 329 (5th Cir. 1985), cert. denied, 476 U.S. 1142 (1986) (finding hospital contractor directly subject to Title VI because of receipt of Medicaid funds).

⁸⁰ See 24 C.F.R. § 1.4 (providing for nondiscrimination in housing programs); 28 C.F.R. § 42.408(c) (DOJ coordinating regulation providing that “[w]here a federal agency requires or permits recipient to process Title VI complaints, the agency shall ascertain whether the recipients’ procedures for processing complaints are adequate.”).

⁸¹ See Fed. Transit Admin., U.S. Dep’t of Transp., C 4702.1A: Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients (May 13, 2007), *available at* http://www.fta.dot.gov/documents/Title_VI_Circular_4702.1A.pdf.

⁸² *Id.* at II-1.

Along similar lines, the community development projects overseen by HUD can have multifaceted impacts that are greatly variable across locations.⁸³ For all agencies, the difficulties incumbent in assessing racially discriminatory harms should prompt efforts to render Title VI reviews and procedures *more* accessible, so that community impacts are better understood, while informing staff training and research investments.

While keeping in mind its obligations to the community at large, including vulnerable individuals and populations, any agency negotiating these relationships will need to consider the impact of enforcement on the recipient's beneficiaries and the continuing working relationship between federal and state entities—and Title VI and DOJ's Coordinating Regulations contemplate this concern across the board. *See* 42 USC §2000d-1; *Bd. of Pub. Instruction v. Finch*, 414 F.2d 1068, 1075 n.11 (5th Cir. 1969) (voluntary compliance should be sought and the termination of funds is a last resort, due to concerns for beneficiaries of federal assistance); *but see* 28 C.F.R. § 42.411(a), balancing this concern with the requirement that the agency ensure responsive action or then proceed to stronger enforcement measures.

EPA's role as a leading federal agency charged with protecting public health and the environment may be unique, but in our cooperative federalist system the challenges posed by the dual roles of agencies in policing recipients for compliance with Title VI and working cooperatively with them to implement federal laws and programs are shared by all federal agencies. The cooperative federalist model is no excuse for limiting EPA's Title VI enforcement program.

II. The Complainant Guidance

EPA's Complainant Guidance plainly responds to the criticism the environmental justice community has levied against EPA following EPA's exclusion of the complainants during the resolution of *Angelita C. v. California Department of Pesticide Regulation*, EPA File No. 16R-99-R9. Despite what appear to be good faith efforts by EPA, the Complainant Guidance neither provides anything beyond what the agency already does nor bestows any procedural

⁸³ *See, e.g., Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970) (finding that the procedures HUD followed in approving a change in an urban renewal plan that altered a plan for owner-occupied dwellings to a plan for rental dwellings with rent supplement assistance failed to make any inquiry into the effect of the change in type of housing on the racial concentration in the renewal area or in the city as a whole, and were not in adequate compliance with Title VI or the Fair Housing Act.)

rights on those filing complaints or suffering discrimination. Moreover, the Complainant Guidance fails to adhere to important principles set forth in EPA's 2003 Public Involvement Policy⁸⁴ and EPA's 2006 Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs.⁸⁵

EPA's Complainant Guidance suffers from several major deficiencies. First, EPA's labeling of those filing complaints or suffering discrimination as "Tipsters" is insulting to communities of color experiencing the impacts of environmental injustice. If EPA is serious about reforming its Title VI program, then EPA must institutionally change how it views and treats complainants and community stakeholders – people living and working in proximity to permitted facilities and toxic sites – more generally. Second, EPA must meaningfully involve those suffering discrimination in the investigation of their complaints, including proactively involving them in the investigation, providing full and free access to documents, and providing the resources to even the playing field during Alternative Dispute Resolution ("ADR"). Third, a complainant should receive immediate notice of a preliminary finding of discrimination, be included in any voluntary compliance negotiations on equal footing with the discriminating recipient, and be allowed to offer and receive settlement terms that actually remedy the discrimination suffered.

(A) Title VI Complainants Should Receive Dignified and Protective Treatment from EPA.

EPA's use of the term "tipster" in the Complainant Guidance denigrates those who suffer from unlawful discrimination. EPA justifies the use of that term because a "complainant is not like a plaintiff in court."⁸⁶ EPA asserts, "[r]ather, a complainant's role is more like that of a tipster, who reports what he or she believes is an act violating Title VI. . ."⁸⁷ EPA is correct that a complainant need not actually be a victim of discriminatory actions by a recipient to be eligible to file a Title VI complaint. *See* 24 C.F.R. § 7.120(a) ("A person who believes that he or she or a specific class of persons has been discriminated against in violation of this part may file a

⁸⁴ EPA, Public Involvement Policy (May 2003), *available at* <http://www.epa.gov/publicinvolvement/pdf/policy2003.pdf>

⁸⁵ 71 Fed. Reg. 14,207 (Mar. 21, 2006).

⁸⁶ Complainant Guidance at 1.

⁸⁷ *Id.*

complaint. The complaint may be filed by an authorized representative.”) However, more often than not, those who file Title VI complaints are directly harmed by the discriminatory actions of a recipient. For example, the children on whose behalf their parents filed a Title VI complaint in the *Angelita C.* case suffered discrimination from unhealthy short-term and long-term exposures to methyl bromide.⁸⁸ Those parents and others who are the victims of discriminatory conduct are not merely dropping a dime on a criminal or snitching. Instead, they seek to protect their right to be free from discrimination on the basis of race, color or national origin. EPA should delete all references to the term “tipster” in its final complainant guidance.

(B) EPA Must Provide Complainants a Meaningful Opportunity to Participate in the Title VI Complaint Process.

Rather than proposing new procedural protections, EPA instead offers to use its discretion to decide whether to include complainants in the investigation and resolution of their civil rights complaints. While EPA claims the Complainant Guidance “enhance the roles and opportunities for complainants . . . to participate in the complaint and resolution process,” the agency retains its discretion to exclude complainants when “appropriate” from complaint investigation and resolution, and appears to claim that such discretion is not subject to judicial review.⁸⁹ Because EPA proposes to use its discretion to decide whether to involve complainants, this Complainant Guidance does little, if anything, to enhance the role of complainants in the Title VI complaint process.

EPA’s failure to expand the role of complainants in the Title VI complaint process flies in the face of the agency’s 2003 Public Involvement Policy and 2006 Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. In general, those documents dictate that both EPA and recipients provide opportunities for early and meaningful community involvement in agency decision-making, as

⁸⁸ See Letter from Rafael DeLeon, Dir., OCR, to Christopher Reardon, Acting Dir., Cal. Dep’t of Pesticide Regulation (Apr. 22, 2011).

⁸⁹ Complainants Guidance at 1. Ironically, while EPA considers complainants to be “tipsters,” the agency routinely dismisses complaints for a variety of procedural defects, such as the statute of limitations, without using EPA’s authority to investigate the alleged discrimination. Moreover, we are not aware of any instance in which EPA used its discretion to waive a statute of limitations defect and investigate a complaint notwithstanding that defect.

well as transparency in agency decision-making. Below are relevant excerpts from EPA's 2003 Public Involvement Policy, which expressly applies to all EPA programs and activities.⁹⁰

Agency officials should strive to provide for, encourage, and assist public involvement in the following ways:

- Involve the public early and often throughout the decision-making process
- Identify, communicate with and listen to affected sectors of the public (Agency officials should plan and conduct public involvement activities that provide equal opportunity for individuals and groups to be heard. Where appropriate, Agency officials should give extra encouragement and consider providing assistance to sectors, such as minority and low-income populations, small businesses, and local governments, to ensure they have full opportunity to be heard and, where possible, access to technical or financial resources to support their participation.)
- Involve members of the public in developing options and alternatives when possible and, before making decisions, seek the public's opinion on options or alternatives
- Use public input to develop options that facilitate resolution of differing points of view
- Make every effort to tailor public involvement programs to the complexity and potential for controversy of the issue, the segments of the public affected, the time frame for decision making and the desired outcome
- Develop and work in partnerships with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement.⁹¹

The Policy also contains provisions regarding the principles of environmental justice, providing information to the public in a timely way, the availability of relevant documents, and the need to ensure that stakeholder groups participating in ADR are highly involved and informed.⁹²

⁹⁰ EPA's 2006 Title VI Public Involvement Guidance applies to recipients of federal financial assistance, as opposed to EPA. In promulgating that Guidance, EPA observed that "[t]he fundamental premise of EPA's 2003 Public Involvement Policy is that 'EPA should continue to provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input.' . . . OCR suggests that EPA recipients consider using a similar approach when implementing their environmental permit programs." 71 Fed. Reg. at 14,210.

⁹¹ EPA, Public Involvement Policy 2-3 (May 2003).

⁹² The Policy also includes the following provisions:

Consistent with the provisions of EPA's 2003 Public Involvement Policy, below we set out recommendations for regulatory reform, which accords complainants their proper role in the investigation and resolution of Title VI complaints.

First, EPA's Title VI regulations should specifically mandate that complainants have a meaningful role in the complaint process. Such a role would include the opportunity to respond to a proposed EPA decision by submitting evidence and briefing in response to the proposed decision, a benefit recipients already enjoy. Often, a Title VI complainant lacks the resources to

This Policy complements and is consistent with EPA's environmental justice efforts. . . . This includes ensuring greater public participation in the Agency's development and implementation of its regulations and policies. (Memorandum from EPA Administrator Christine Todd Whitman, dated August 9, 2001, "EPA's Commitment to Environmental Justice.") (See also, Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," dated February 11, 1994.) Thus, ensuring meaningful public involvement advances the goals of environmental justice. . . .

Whenever possible, Agency officials should:

- Provide the public with adequate and timely information concerning a forthcoming action or decision
- Provide policy, program, and technical information to the affected public and interested parties at the earliest practicable times, to enable those potentially affected or interested persons to make informed and constructive contributions to decision making
- Provide information at places easily accessible to interested and affected persons and organizations
- To the extent practicable, provide the public with integrated, on-line, user-friendly access to health and environmental data and information and to the extent practicable, enable communities, including minority, low-income and underserved populations, to have access to relevant data and information. . . .

Repositories or Dockets:

The Agency should provide one or more central collections of documents, reports, studies, plans, etc. relating to controversial issues or significant decisions in a location or locations convenient to the public. Suitable locations will depend on the nature of the action. For national rules a single central docket is generally appropriate, but local repositories may be preferable when decisions relate to individual facilities or sites. . . . Agency officials are encouraged to determine the accessibility to the interested public and feasibility of electronic repositories that take advantage of the Internet to reach directly into homes, libraries and other facilities throughout a community and across the nation. . . . EPA's EDOCKET is an online public docket and comment system initially designed to expand public access to documents in EPA's major program dockets, eventually to include the other EPA dockets. EDOCKET allows the public to search available dockets online, submit or view public comments, access the index listing of the contents of the docket, and to access, download and print those documents in the docket that are available electronically. . . .

ADR is most effective when there are a few highly involved and informed stakeholder groups who agree to participate in a dialogue through which they raise their concerns and seek to resolve a particular issue by consensus. The Agency can use facilitation and ADR processes to encourage conflict prevention or resolution at any time during a decision-making process.

Id. at 5, 11, 13-14, 17.

produce the type of technical and scientific evidence EPA demands. EPA has recognized this, and should affirm that EPA does the factual investigation and it is not the complainants' burden to produce evidence to prove a Title VI violation.⁹³

Second, EPA should provide complainants with more information than only what is "in its case tracking system."⁹⁴ The current case tracking system that EPA provides on its web site contains nothing more than file numbers, recipient information, and status (updated quarterly).⁹⁵ EPA's regulations should provide complainants with full and no-cost access to the case file, so that complainants do not have to request those documents formally via the Freedom of Information Act, and pay any fees for such access.⁹⁶ Consistent with EPA's Public Involvement Policy's directive that the agency make information available to the public using electronic repositories or dockets,⁹⁷ such access could be accomplished by establishing an online document repository for every complaint that EPA accepts for investigation.⁹⁸

Third, EPA should guarantee the basic due process rights of complainants. Recipients of EPA funding enjoy administrative appeal rights should EPA ever go so far as to find a Title VI violation and rescind federal funding, which EPA has never done. Complainants enjoy no such basic due process rights. To provide complainants with procedural rights and due process, EPA's regulations should, at a bare minimum, provide complainants with the right to administratively appeal any adverse EPA decisions, and the right to seek judicial review of such decisions under the Administrative Procedures Act. Given the fact that *Sandoval* bars civil

⁹³ See 65 Fed. Reg. 39650, 39672 (June 27, 2000) ("... [T]he complainants do not have the burden of proving that their allegations are true, although their complaint should present a clearly articulated statement of the alleged violation. It is OCR's job to investigate allegations and determine compliance.")

⁹⁴ Complainant Guidance at 3.

⁹⁵ See <http://www.epa.gov/ocr/docs/extcom/title-vi-open-complaints.pdf>

⁹⁶ Access to documents in a complainant's file is unreasonably difficult under EPA's current policy and treatment of complainants as "tipsters." Counsel for the complainants in *Padres Hacia una Vida Mejor* and *Angelita C.* sought such records, had their fee waiver partially granted, and had to file a lawsuit to compel EPA to turn over the documents. It has been seventeen months since EPA received those FOIA requests, and EPA has partially turned over *Padres* records but has not provided any of the *Angelita C.* records.

⁹⁷ See discussion, *supra* note 94, at 27.

⁹⁸ EPA should also establish a separate repository for complaints that EPA chooses not to investigate, which would consist of two sets of documents: complaints received, with any supporting documentation, and letters from EPA informing complainants of the status of the case and the agency's decision not to accept the complaint for investigation.

actions except those alleging intentional discrimination, it is of paramount importance that those suffering discrimination not have their complaints dismissed without agency or judicial review.

Finally, we support the use of ADR to resolve complaints but urge EPA to amend its regulations to ensure that complainants have similar access to legal and technical resources during ADR as do recipients of federal funding. Many complainants are not represented by counsel, or else have little or no financial capacity to retain counsel and substantive experts to aid them in the ADR process. A credible ADR process requires a level playing field for negotiations between complainants and respondents. Even when ADR yields a positive result, as was the case recently with *Greenaction for Health and Environmental Justice v. San Joaquin Valley Air Pollution Control District*, EPA File No. 11R-09-R9, complainants are at a competitive disadvantage.⁹⁹ Greenaction lacked counsel while the Air District enjoyed its own in-house attorneys and ample staff resources. EPA has already recognized this unequal playing field in its Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs,¹⁰⁰ and should do so again by amending its Title VI regulations and the Complainant Guidance.

(C) EPA Must Simultaneously Notify Complainants, Respondents and the Public of any Preliminary Findings of Noncompliance.

EPA has only issued one Preliminary Finding of Noncompliance in its entire history, and did so without notifying the complainants until after the agency negotiated a resolution of the complaint with the respondent. On April 22, 2011, EPA issued a preliminary finding in *Angelita C.* finding that the complaint established a *prima facie* violation of Title VI.¹⁰¹ Despite the preliminary finding of noncompliance, and without notifying the complainants, EPA then negotiated a settlement agreement in secret with the respondent, and the agreement merely required additional monitoring rather than prohibiting the discriminatory conduct. The

⁹⁹ See Greenaction Reaches Agreement with San Joaquin Valley Air District to Enhance Public Involvement in Permit Actions, Greenaction, <http://greenaction.org/greenaction-reaches-agreement-with-san-joaquin-valley-air-district-to-enhance-public-involvement-in-permit-actions/>

¹⁰⁰ See 71 Fed. Reg. at 14214 (listing, as one example of an action that can contribute to a successful ADR process, “design[ing] a process that will allow all parties to provide necessary information in good faith and in some cases secure independent technical expertise to assist some of the parties prior to any negotiations”).

¹⁰¹ OCR, EPA, Investigative Report for Title VI Administrative Complaint File No. 16R-99-R9 (2011).

complainants learned of the preliminary finding three months later, when on August 25, 2011, EPA informed the public of its preliminary finding and settlement agreement.

EPA's refusal to include the complainants in resolution of the complaint demonstrates the serious need for regulatory reform. The Complainant Guidance state that EPA "intends to notify complainant of said finding" but "retains the discretion to contact the recipient first."¹⁰² EPA's proposal would still allow the agency to do exactly what occurred in *Angelita C.*: keep everything secret until EPA and the discriminating recipient negotiate without the knowledge, participation, or input of the complainant. Furthermore, the Complainant Guidance proposes that EPA, once again at its "discretion, when appropriate ... engage complainants who want to provide input on potential remedies" and that "EPA will determine based on its discretion when such engagement may occur during the process."¹⁰³ EPA further states that it will "consider complainant's input on potential remedies" and "potential terms of a settlement agreement."¹⁰⁴

EPA should amend its regulations to require simultaneous notification of a preliminary finding of noncompliance to the complainant, respondent, and the general public. The regulations should also mandate the complainant's participation, if the complainant so chooses, in voluntary compliance negotiations.¹⁰⁵ Both EPA's Public Involvement Policy and basic principles of transparency and environmental justice require these reforms. EPA should not have the sole and unfettered discretion to deem when it is or is not "appropriate" to involve the complainant or notify the public.

Furthermore, revisions of EPA's regulations should require that EPA only settle a complaint through a voluntary compliance agreement if that agreement fully remedies the discriminatory conduct and prevents the discriminatory conduct from continuing or recurring.¹⁰⁶ Recipients of EPA funding will not take the threat of EPA enforcement seriously if EPA's

¹⁰² Complainant Guidance at 3 & n.12.

¹⁰³ *Id.* at 4.

¹⁰⁴ *Id.*

¹⁰⁵ As with ADR, EPA must ensure that complainants can participate in the settlement process on an even playing field with a well-armed recipient of federal funding. As Luke W. Cole and Sheila R. Foster have stated, the environmental justice struggle challenges, "first and foremost, the legitimacy of the decision-making process and the social structures that allow ... decisions to be made without the involvement of those most intimately concerned." Cole & Foster, *supra* note 9, at 14.

¹⁰⁶ In *Angelita C.*, for example, the voluntary compliance agreement did little, if anything, to remedy the discriminatory effects of permitting the application of toxic pesticides in close proximity to school grounds. OCR, EPA, Investigative Report for Title VI Administrative Complaint File No. 16R-99-R9 37-38 (2011).

compliance assurance and enforcement efforts amount to nothing more than a slap on the wrist. If other Title VI complaints demonstrate merit, as *Angelita C.* did, and EPA does not demand compliance with Title VI, then recipients of federal funding will ignore Title VI to the detriment of affected communities nationwide.

Thank you for this opportunity to comment on EPA's draft Title VI documents . Again, we appreciate EPA's recognition of the importance of Title VI enforcement , and the time and effort devoted to improving EPA's standards and practices.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Brenman', with a stylized flourish at the end.

Marc Brenman, Social Justice Consultancy

Michael Churchill, Public Interest Law Center of Philadelphia

Allison Elgart, Equal Justice Society

Marianne Engelman Lado, Earthjustice

Steven Fischbach, Environmental Justice League of Rhode Island

Leslie Fields, Sierra Club

Robert Garcia, The City Project

Maya Golden-Krasner, Communities for a Better Environment

Megan Haberle, Poverty & Race Research Action Council

Al Huang, Natural Resources Defense Council

Anne Katten, California Rural Legal Assistance Foundation

Marylia Kelley, Tri-Valley CAREs

Aaron Kleinbaum, Eastern Environmental Law Center

Denny Larson, Global Community Monitor

Gregg P. Macey, Brooklyn Law School (for identification only)

Mike Meuter, California Rural Legal Assistance, Inc.

Vernice Miller-Travis, Maryland State Commission on Environmental Justice and Sustainable Communities

Richard Moore, Los Jardines Institute (The Gardens Institute)

Renee Nelson, Clean Water and Air Matter

Brent Newell, Center on Race, Poverty & the Environment

Jonathan Ostar, OPAL Environmental Justice Oregon

Joe Rich, Lawyers' Committee for Civil Rights Under Law

Virginia Ruiz, Farmworker Justice

Paul Towers, Pesticide Action Network North America

Omega Wilson, West End Revitalization Association

Exhibit 3

Center on Race, Poverty & the Environment * The City Project * Conservation Law
Foundation * Earthjustice * Environmental Justice League of Rhode Island *
Humansynergyworks.org * New Mexico Environmental Law Center * NRDC * Sierra
Club * West End Revitalization Association, Inc.
Marc Brenman * Patrice Lumumba Simms

Gina McCarthy
Administrator
Gwendolyn Keyes Fleming
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Washington, DC 20460

November 5, 2013

Dear Administrator McCarthy,

The undersigned environmental justice and environmental organizations and advocates write to request a meeting with you and your key staff to discuss Title VI enforcement and compliance issues. We are heartened by your commitment to environmental justice and hopeful that under your leadership, the agency will develop a civil rights compliance and enforcement program that has meaningful impact for communities that are all too often overburdened by toxic contamination.

As you may know, our loose alliance of organizations and advocates began meeting with EPA staff at the beginning of the Obama Administration. At that time, we raised initial concerns about the backlog of Title VI complaints, as well as the methodology used by the agency to undertake complaint investigations. We were concerned that the complaint investigation and resolution process had developed too slowly, was in violation of relevant regulations, and afforded minimal transparency. Indeed, given additional concerns about the capacity of the Office of Civil Rights to pursue investigations, the lack of adequate training for staff, recipients, and communities, and the failure of the agency to engage complainants and stakeholder communities in a meaningful way in the investigation process and, particularly, when developing remedial options, we were concerned that EPA's Title VI complaint and investigation processes were fundamentally broken.

Over time, we have been encouraged by frank conversation with Administrator Lisa Jackson, Deputy Administrator Robert Perciasepe, and other personnel. Significantly, the Administrator prioritized response to the *Evaluation of the EPA Office of Civil Rights*, the Final Report submitted by Deloitte Consulting LLP in March, 2011. Under Administrator Jackson's leadership, EPA also scaled up the agency's strategic planning

for environmental justice through its *Plan EJ 2014*, *Plan EJ 2014: Legal Tools*, and related documents.

Yet significant concerns remain. For example, efforts to resolve complaints in the backlog have raised questions about the agency's continued failure to engage complainants and community-based stakeholders in decision-making affecting the future of their communities. This includes, for example, questions about the agency's dismissal of complaints based on the 180 deadline for filing in situations when violations are ongoing but the agency chooses not to exercise its authority to address the continuing presence of pollution affecting human health. Moreover, there remains tremendous uncertainty about the legal standards applicable to recipients of federal funds and, in turn, that govern EPA investigations. In our meetings with Administrator Jackson, we focused initially on the definition and standard applied to the evaluation of "adversity" given the importance of the issue and, also, the fact that EPA's finding of no adversity in *Select Steel* (EPA File No. 5R-98-R5) created a significant credibility problem for the agency's civil rights program. Although EPA released a draft guidance on some aspects of the issue on January 24, 2013, "Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Thresholds," the draft has not been finalized and it is not clear what standards EPA is currently applying. Indeed, more comprehensive guidance is sorely needed. Many of the undersigned submitted comments on the draft Adversity document as well as "Title VI of the Civil Rights Act of 1964: Role of Complainants and Recipients in the Title VI Complaint and Resolution Process" (January 25, 2013).

Many of the undersigned also filed expansive comments in response to the publication of the Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs and Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits, 65 Fed. Reg. 39,650 (June 27, 2000) (Draft Revised Guidance documents). To this day, EPA has released no response to these comments. Even more significantly, the status of these guidance documents remains unclear, a situation all the more disconcerting because of our belief that some of the positions taken are inconsistent with a strong Title VI enforcement program. Moreover, though EPA leads an interagency workgroup on Title VI coordination and referrals, the agency has not released any information providing guidance on coordination among federal and state agencies responsible for Title VI compliance and enforcement activities.

We have appreciated the opportunity to meet with the Administrator, the Office of Civil Rights, and members of the Administrator's staff on these issues and hope that we can re-engage in a meaningful conversation in the coming weeks. Specifically, we hope that we can make progress on the following issues:

- Process: We recommend that EPA modify policies and practices governing communications with complainants and community-based stakeholders in the Title VI enforcement process, both to ensure a more active role for complainants

and community-based stakeholders in the Title VI enforcement process, and to bring Title VI enforcement into line with environmental justice principles and EPA efforts to encourage “meaningful engagement” of overburdened communities in permitting and other decision-making.

- Transparency: We recommend that EPA make up-to-date information about Title VI enforcement more readily available, including, for example, maintaining a docket with links to complaints, resolution agreements, and other official documents on EPA’s website.
- Legal standards: We recommend that EPA revise standards – including not only the standard for determining adversity but also issues such as what constitutes sufficient justification – that are set forth in the *Draft Revised Guidance* and related documents and, also, resolve uncertainty around the applicable standards by finalizing improved guidance documents.
- The backlog: We recommend that EPA establish a date by which the EPA will complete its investigations and resolve all pending Title VI civil rights complaints, with the involvement of complainants and their attorneys.
- Capacity & Infrastructure: EPA must ensure that the organizational dynamics and challenges outlined in the Deloitte report are fully addressed. EPA should also consider how it can preserve scarce agency resources during the preliminary investigation of a complaint.
- Coordination: EPA must take the lead on coordinating Title VI compliance and enforcement with delegated programs, EPA’s regional programs, and other federal agencies.
- Remedies: EPA must ensure that when it enters into a voluntary compliance agreement, remedial measures protect communities and secure Title VI compliance.

Note that our organizations view Title VI enforcement and compliance as deeply connected to the agency’s commitment to environmental justice. Moreover, as the federal government implements provisions of the Affordable Care Act that provide protection against discrimination in health programs and activities receiving federal financial assistance, we would welcome the opportunity to discuss EPA’s role and coordination with the U.S. Department of Health & Human Services to promote strong enforcement and healthy communities.

We deeply appreciate the time that EPA staff has taken in the past to meet with us to discuss priority concerns and the requests we have made to the agency. At the same time, as you have noted, progress will be judged by the difference that is made on the ground, in overburdened communities and, particularly, low-income communities of color. It is our sincere hope that EPA can be a leader in civil rights enforcement. Thank you for your time and consideration.

Most Sincerely,

Marianne Engelman Lado
Managing Attorney
Earthjustice

On behalf of:

Marc Brenman, Social Justice Consultant

Veronica Eady
VP, Director, Healthy Communities & Environmental Justice
Conservation Law Foundation

Leslie Fields
Program Director, Environmental Justice and Community Partnerships
Sierra Club

Steven Fischbach
Vice Chairperson
Environmental Justice League of Rhode Island

Robert Garcia
Founding Director and Counsel
The City Project

Albert Huang
Senior Attorney, Environmental Justice, Urban Program
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Vincent Martin
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Doug Meiklejohn
Executive Director
New Mexico Environmental Law Center

Brent Newell
Legal Director
Center on Race, Poverty & the Environment

Patrice Lumumba Simms
Assistant Professor
Howard University School of Law

Omega Wilson
West End Revitalization Association, Inc.

cc: Robert Perciasepe, Deputy Administrator
Vicki Simons, Acting Director, Office of Civil Rights
Helena Wooden-Aguilar (Acting Deputy Director
Lisa Garcia, Associate Assistant Administrator for Environmental Justice
Charles Lee, Deputy Associate Assistant Administrator for Environmental Justice

Exhibit 4

Center on Race, Poverty & the Environment * The City Project * Earthjustice *
Environmental Justice League of Rhode Island * Human Synergy Works * New Mexico
Environmental Law Center * NRDC * Sierra Club * West End Revitalization
Association, Inc.
Marc Brenman * Vernice Miller-Travis

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November 24, 2014

Dear Administrator McCarthy,

The undersigned environmental justice and environmental organizations and advocates write to express our deeply felt sense of urgency about the need to move forward in building a meaningful Title VI compliance and enforcement program at EPA and to request a follow up meeting with you and your key staff as soon as possible to discuss these issues. Though we are concerned about the pace and even direction of change in EPA's Title VI program, we remain hopeful that under your leadership, the agency will develop a civil rights program that has meaningful impact for communities that are all too often overburdened and adversely affected by toxic contamination and other environmental insults.

As you may recall, our loose alliance of organizations and advocates began meeting with EPA staff at the beginning of the Obama Administration. Many of our groups had been advocating for a stronger compliance and enforcement program for years, and had raised concerns about the backlog of Title VI complaints, the methodology used by the agency to undertake complaint investigations, the lack of adequate training for staff, recipients, and communities, and the failure of the agency to engage complainants and stakeholder communities in a meaningful way in the investigation process and, particularly, when developing remedial options. As we mentioned to you during our initial meeting on February 18th of this year, EPA's Title VI complaint and investigation processes are fundamentally broken.

In our meetings with Administrator Jackson, we focused initially on the definition and standard applied to the agency's evaluation of the "adversity" prong of Title VI's disparate impact standard. We communicated our concern that EPA's finding of no adversity in *Select Steel* (EPA File No. 5R-98-R5) created a significant credibility problem for the agency's Title VI program. In a subsequent meeting on July 26, 2012 with Deputy Administrator Robert Perciasepe and others in EPA's leadership, we were told that EPA anticipated moving away from the rebuttable presumption and reliance on health-based environmental standards in determining whether the "adversity" prong of the disparate impact standard is met. This message became a commitment, and EPA released a draft guidance on the issue on January 24, 2013 entitled "Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Thresholds." Though many of the undersigned submitted comments on the draft Adversity document as well as "Title VI of the Civil Rights Act of 1964: Role of Complainants and Recipients in the Title VI Complaint and Resolution Process" (January 25, 2013), and raised concerns, we at least believed that OCR had passed one goalpost, leaving behind the rebuttable presumption.

More recently, however, we learned that OCR has not incorporated the basic concepts in the draft guidance into trainings and investigations, representing a significant step backward. Of course, the continued life of the notorious "rebuttable presumption" is only one of many barriers in the way of building an effective Title VI program. Why is there no accountability for OCR's failure to meet milestones and deadlines in the Title VI Supplement to Plan EJ-2014 – effectively, to develop a functioning Title VI compliance and enforcement program? Why isn't OCR held to the standard set forth in Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requiring each agency to ensure greater public participation? Why hasn't EPA provided additional support for Title VI compliance and enforcement if OCR is truly hamstrung in responding to Title VI complaints in an effective, thorough, and timely way by lack of staff and resources? On a most fundamental level, we have to ask why the most impacted communities such as Vincent Martin's, in Detroit, are not offered equal protection of the law and why polluting industries continue operating, exacerbating already overwhelming rates of illness, with no relief for the affected population.

We urgently seek a meeting to discuss how we can find a way forward and how our groups and the communities we serve can help EPA become a leader in meeting this Administration's commitment to developing a model civil rights program, a goal that we share.

Thank you for your time and consideration.

Most Sincerely,

A handwritten signature in black ink, appearing to read 'M Engelman Lado', with a stylized flourish at the end.

Marianne Engelman Lado
Managing Attorney
Earthjustice

On behalf of:

Marc Brenman, Social Justice Consultant

Leslie Fields
Program Director, Environmental Justice and Community Partnerships
Sierra Club

Steven Fischbach
Board Member Environmental Justice League of Rhode Island

Robert Garcia
Founding Director and Counsel
The City Project

Albert Huang
Senior Attorney,
Director of Environmental Justice
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Exhibit 5

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October 27, 2015

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By First Class Mail and Email

Re: External Compliance and Complaints Program Strategic Plan: Fiscal Year 2015-2020

Dear Administrator McCarthy and Office of Civil Rights,

Below please find comments on the draft "External Compliance and Complaints Program Strategic Plan: Fiscal Year 2015-2020," (the "Strategic Plan"). These comments are identical in substance to the letter we submitted yesterday, but we write again to add the names of additional signatories.

The undersigned organizations and individuals submit these Comments to emphasize the critical importance of Title VI enforcement in communities across the

country and to express appreciation for the new energy that the Administration has brought to the Office of Civil Rights (“OCR”). At the same time, given the long history of poor performance by the agency in fulfilling its statutory responsibility to enforce anti-discrimination laws, we strongly oppose rulemaking that would weaken EPA’s accountability, including changes that would remove regulatory deadlines. The Strategic Plan also fails to address some critical elements necessary for a strong enforcement program and to bring the program into line with principles of environmental justice. These comments provide more detail and identify additional goals and benchmarks that should be incorporated in the final Strategic Plan.

A. An Effective Title VI Program Requires Major Reform.

OCR’s poor performance historically is well-known and well-documented,¹ and the impact of this poor performance on OCR’s credibility has been significant. The undersigned organizations and individuals live and work in, represent, and partner with environmental justice communities that have waited too long for OCR to prevent and address racial and ethnic disparities in the distribution of environmental contaminants and health hazards, as well as disparities in the availability of environmental benefits. The history of EPA’s failure to enforce Title VI — either through the complaint mechanism or with its affirmative authority — has created gaping holes in civil rights compliance, and OCR’s inaction across multiple Administrations telegraphed the message that recipients of EPA funding need not comply with Title VI nor use their legal authorities or expertise to eliminate, reduce or avoid racially disparate impacts. In the words of a recent report by the Center for Public Integrity:

Time and again . . . , communities of color living in the shadows of sewage plants, incinerators, steel mills, landfills and other industrial facilities across the country — from Baton Rouge to Syracuse, Phoenix to Chapel Hill — have found their claims denied by the EPA’s civil rights office In its 22 -year history of processing environmental discrimination complaints, the office has never once made a formal finding of a Title VI violation.²

EPA has been well aware of this dynamic, as highlighted by the candor of a high ranking state official, who noted in 2000 that EPA’s Draft Title VI guidance was a “tiger without teeth” and that “he was not going to pay particular attention to it.”³ With this history as background, we applaud real steps to make OCR, in the words of the Strategic Plan, “a

¹ See, e.g., Yue Qiu & Talia Buford, *Decades of Inaction*, Ctr. for Pub. Integrity (Aug. 3, 2015), <http://goo.gl/khzht0> (cataloguing disposition of complaints over 17 year period); Deloitte Consulting, *Evaluation of the EPA Office of Civil Rights 2* (March 21, 2011), available at <https://goo.gl/CmkrZ> (describing OCR’s “record of poor performance”).

² Kristen Lombardi, Talia Buford & Ronnie Greene, *Environmental racism exists and the EPA is one reason why*, Ctr. for Pub. Integrity (Aug. 3, 2015), <http://goo.gl/cUV2Lg>

³ See *Environmental Justice: Draft Revised Civil Rights Guidance Clarifies Definitions, Addresses State Issues*, 31 Env’t Rep. 1331 (June 23, 2000) (quoting Russell Hardin, then Director of Michigan’s Department of Environmental Quality).

model civil rights program worthy of replication.”⁴ Ultimately, the success of reform efforts will be judged by their efficacy in preventing and addressing discriminatory policies. Until OCR exercises its authority, Title VI enforcement will continue to be illusory.

B. The Strategic Goals Envisioned by the Strategic Plan – Enhancing Docket Management, Developing a Proactive Compliance Program, and Strengthening OCR’s Workforce – Are Needed to Improve EPA’s Civil Rights Enforcement.

The Strategic Plan emphasizes concrete steps both to reform the complaint process and to develop a compliance program. Both are needed. A letter dated November 5, 2013 from many of the signatories to Administrator McCarthy outlined key issues that require attention from the agency, with recommended steps for addressing each issue:⁵

- “Process: We recommend that EPA modify policies and practices governing communications with complainants and community-based stakeholders in the Title VI enforcement process, both to ensure a more active role for complainants and community-based stakeholders in the Title VI enforcement process, and to bring Title VI enforcement into line with environmental justice principles and EPA efforts to encourage “meaningful engagement” of overburdened communities in permitting and other decision-making.
- “Transparency: We recommend that EPA make up-to-date information about Title VI enforcement more readily available, including, for example, maintaining a docket with links to complaints, resolution agreements, and other official documents on EPA’s website.
- “Legal standards: We recommend that EPA revise standards – including not only the standard for determining adversity but also issues such as what constitutes sufficient justification – that are set forth in the *Draft Revised Guidance* and related documents and, also, resolve uncertainty around the applicable standards by finalizing improved guidance documents.
- “The backlog: We recommend that EPA establish a date by which the EPA will complete its investigations and resolve all pending Title VI civil rights complaints, with the involvement of complainants and their attorneys.
- “Capacity & Infrastructure: EPA must ensure that the organizational dynamics and challenges outlined in the Deloitte report are fully addressed. EPA should also consider how it can preserve scarce agency resources during the preliminary investigation of a complaint.

⁴ Strategic Plan, at 3.

⁵ Letter from Ctr. for Race, Poverty & the Env’t. et al. to Adm’r McCarthy (November 5, 2013), at 2-3.

- “Coordination: EPA must take the lead on coordinating Title VI compliance and enforcement with delegated programs, EPA’s regional programs, and other federal agencies.
- “Remedies: EPA must ensure that when it enters into a voluntary compliance agreement, remedial measures protect communities and secure Title VI compliance.”

Although, as described below, the steps outlined in the Strategic Plan do not address all of these issues, EPA’s emphasis on initiating compliance reviews, enhancing data collection, developing and utilizing a case resolution manual consistent with federal best practices, increasing transparency, and improving training are each responsive to problems identified in the past.

To highlight a few examples, Goal 1 Benchmark 6 states “OCR will increase transparency and accountability by posting its Case Resolution Manual, settlement agreements, and final decisions on its public website,” which is responsive to the need for more transparency. The final Strategic Plan should, however, include a commitment to post all public documents associated with OCR’s investigations and not limit transparency to the Manual, settlement agreements and final decisions. Environmental justice communities seeking information about prior complaints or previous Title VI enforcement efforts should not each be required to request such basic information under the Freedom of Information Act, which is both burdensome for communities and inefficient for EPA. OCR should publish complaints, communications regarding final case decisions, and all other public documents in a timely way.⁶ The final Strategic Plan should include a timeline for achieving this and other goals, as well as timelines for updating information on the website.

Goal 1 Benchmark 4, which calls for “a comprehensive investigative, policy and legal training curriculum” for OCR staff, and Goal 3, which includes benchmarks to strengthen OCR’s workforce, are responsive to the need to build capacity and infrastructure. In addition, Goal 1, Benchmark 1, which commits OCR to developing and posting a Case Resolution Manual to include the standard operating procedures, a strategic case assessment plan, and templates, is responsive to recommendations to improve capacity and infrastructure, improve transparency, and to process complaints in a timely way.

The Strategic Plan’s emphasis on developing a proactive compliance program is also consistent with EPA’s authority and responsibilities under Title VI. Goal 2 Benchmark 1, for example, calls for strengthening compliance reviews. The Strategic Plan fails to explain what criteria will be applied to determine when OCR will initiate compliance reviews. Moreover, the Plan should include a benchmark for integrating OCR’s complaint and investigation efforts with the affirmative proactive compliance

⁶ Notably, the Center for Public Integrity was able to post such materials, which they obtained through FOIA, within a relatively short time frame. See Lombardi, Buford & Greene, *supra* note 2. Stakeholders should not have to rely, however, on the Center rather than EPA for updated information.

program so that complaints that may provide a reasonable basis for belief that there may be discrimination will trigger compliance reviews even if the complaint itself might not meet jurisdictional requirements. OCR simply fails to serve justice when it dismisses a complaint on jurisdictional grounds and ignores discrimination. Instead, EPA should initiate a compliance review if it has reason to believe that discrimination may be occurring in a program or activity that receives EPA funding.⁷

C. Any Re-Evaluation of EPA's Title VI Regulations Should Strengthen, Not Weaken EPA's Title VI Enforcement Program; in Particular, EPA Should Not Remove Regulatory Deadlines for Action.

In light of EPA's poor record of case management, signatories strongly oppose the proposal to remove deadlines from EPA's Title VI regulations, which would weaken rather than strengthen EPA's enforcement program and is based on faulty premises.

The regulations currently require that OCR "promptly investigate all complaints ... unless the complainant and the party complained against agree to a delay pending settlement negotiations."⁸ In addition, the regulations provide a set of deadlines for the investigation: EPA must notify the complainant and recipient of the agency's receipt of the complaint within 5 calendar days,⁹ complete its jurisdictional review within 20 calendar days of the notice,¹⁰ and complete its preliminary investigation and notify the recipient in writing of preliminary findings, recommendations (if any) for achieving voluntary compliance, and information about the recipient's right to engage in voluntary compliance negotiations, within 180 days from the start of a compliance review or a complaint investigation.¹¹

The Strategic Plan states that EPA will engage in rulemaking "that will reaffirm EPA's discretion to determine how to ensure the prompt, effective, and efficient resolution of its cases and reaffirm EPA's enforcement discretion to tailor its approach to complaints to match their complexity, scope and nature." To be clear, EPA has in the past simply failed to be "prompt, effective or efficient" in resolution of its cases – and not because the timelines were a barrier. To our knowledge, never has a complainant sued EPA because the agency was one day, one week, one month, or even one year beyond its regulatory deadlines. Neither EPA's regulations, nor complainants, nor recipients have bound the agency in a rigid or inflexible way to its deadlines. A recent investigation by the Center for Public Integrity found the following:

[A Review of] 265 complaints filed from 1996 to 2013 shows that the EPA has failed to adhere to its own timelines: On average, the office took 350 days to decide whether to accept a complaint and allowed cases to

⁷ See 40 C.F.R. § 7.115(a) (2010) (OCR may conduct compliance reviews "when it has reason to believe that discrimination may be occurring....").

⁸ 40 C.F.R. § 7.120 (2010).

⁹ 40 C.F.R. § 7.120(c) (2010).

¹⁰ 40 C.F.R. § 7.120(d)(1)(i) (2010).

¹¹ 40 C.F.R. § 7.115(c) (2010).

stretch 624 days from start to finish. A consultant's report, which examined cases from 1993 to 2010, found that the agency accepted or rejected just 6 percent within the allotted time period. Half took a year or more to be adjudicated.¹²

And yet the regulatory deadlines have been the sole legal recourse for communities to hold what has been a negligent agency accountable. Removing the deadlines from the text of the applicable regulations will only weaken pressure on the agency to conduct investigations and manage cases in a "prompt, effective, and efficient" way.

The Strategic Plan glosses over its proposal to remove regulatory deadlines with two interconnected arguments – first, that the change would bring EPA into line with other agencies and, second, that current regulatory deadlines are somehow infeasible in light of the "inherent scientific complexity associated with determining how populations are impacted by environmental pollutants and the number of discrimination allegations and theories that may be asserted in any one complaint...."¹³

EPA's argument about alignment with other federal agencies loses sight of the context: after more than four decades of inaction, it is time for accountability. While current efforts are appreciated, strategic plans don't compel action over time and don't create mandatory duties. By comparison, regulatory deadlines can only be changed after notice and comment rulemaking. By removing regulatory deadlines now, EPA would weaken much needed accountability in the future, as administrations and priorities change over time. Moreover, the deadlines in EPA's regulations are already consistent with policies and practices in sister agencies.¹⁴

EPA's failure to conduct investigations in a timely way provides no ground for confidence that the agency would exercise the even greater discretion afforded by revising the regulations in a "prompt, effective or efficient" way. In 2005, for example, Rosemere Neighborhood Association filed suit against EPA seeking to compel OCR to make its initial jurisdictional determination – that is, to accept or reject its complaint – on a claim of retaliation that had been filed 18 months beforehand.¹⁵ OCR notified the complainants of its determination approximately six weeks after the litigation was filed and then moved to dismiss the case as moot.¹⁶ The court noted, however, that EPA's noncompliance with regulatory deadlines was pervasive:

¹² Talia Buford, *Thirteen years and counting: anatomy of an EPA civil rights investigation*, Ctr. for Pub. Integrity (Aug. 7, 2015), <http://goo.gl/qGpYBS>; see also Deloitte Consulting, *supra* note 1.

¹³ Strategic Plan, at 5, 10.

¹⁴ See, e.g., Federal Highway Administration, U.S. Department of Transportation, *Procedures Manual for Processing External Complaints of Discrimination*, Sections 2-2 (D) & (H) (May 18, 2012), available at <https://goo.gl/e4LnYj> (10-day time frame for jurisdictional review and 180-day timeframe for completing investigations).

¹⁵ *Rosemere Neighborhood Ass'n v. EPA*, 581 F.3d 1169, 1171 (9th Cir. 2009).

¹⁶ Significantly, the Neighborhood Association was able to bring pressure to bear on the agency to act because of the specific timeframes in the regulations.

Rosemere's experience before the EPA appears, sadly and unfortunately, typical of those who appeal to OCR to remedy civil rights violations ... discovery has shown that the EPA failed to process a *single* complaint from 2006 to 2007 in accordance with its regulatory deadlines.¹⁷

More recently, a district court judge in the Northern District of California found that delays in case handling had persisted despite the Administrator's recognition of the problem and assertion that steps were taken to address concerns, "including increasing staff and establishing a working group and task force to address the back lot [sic] of Title VI complaints."¹⁸ The court noted, further, that "[a] privately conducted report found that EPA complied with the 20-day period to accept, reject, or refer a complaint in only six percent of cases the report examined.... An EPA chart showed that EPA complied with the 20-day 'jurisdictional determination' in only two instances out of 136. A number of complaints have not been resolved years after they were accepted for investigation, including one dating back to 1994."¹⁹ Indeed, this year five complainants filed suit to challenge EPA's unreasonable delay in completing even preliminary investigations in their cases, which were filed between 1994 and 2003, all more than a decade ago.²⁰ EPA accepted these complaints for investigation between 1995 and 2005.²¹ Regulatory timelines can hardly be blamed for establishing "inflexible" deadlines; what they do provide is a mechanism for demanding relief from an agency that has failed to fulfill its duties.

The Strategic Plan also suggests that "scientific complexity" justifies its call for greater flexibility. At the outset, complexity has little relationship with deadlines for providing notice²² or even, in most cases, conducting jurisdictional reviews.²³ This argument is only even relevant to the challenges of conducting an investigation and reaching a preliminary decision within 180 days.

Even there, the challenge is one of the agency's making: EPA's approach to investigations is not sustainable and is not compatible with effective civil rights enforcement. Since its decision in *Select Steel*,²⁴ EPA has inappropriately conflated standards for environmental compliance with analysis of the "impact" prong of claims of disparate impact under Title VI of the Civil Rights Act of 1964. EPA acknowledges that "complex and unique issues" arose out of its perception of "the need to merge the objectives and requirements of Title VI with the objectives and requirements of the

¹⁷ *Rosemere v. EPA* at 1175 (emphasis in original).

¹⁸ *Garcia v. McCarthy*, No. 13-CV-03939-WHO, 2014 WL 187386, at *3 (N.D. Cal. Jan. 16, 2014).

¹⁹ *Id.* (citations omitted).

²⁰ Complaint for Declaratory and Injunctive Relief, *Californians for Renewable Energy v. EPA*, 4:15-CV-03292-SBA (N.D. Cal. July 15, 2015), at 2.

²¹ *Id.*

²² See 40 C.F.R. § 7.120(c) (2010) (deadline for notice).

²³ See 40 C.F.R. § 7.120(d)(1)(i) (2010) (deadline for jurisdictional review).

²⁴ OCR, *Investigative Report for Title VI Administrative Complaint File No. 5R-98-R5 (Select Steel Complaint)* (1998) ("Select Steel").

environmental laws that the Agency implements.”²⁵ This endeavor – the merger of objectives – was misguided from its inception. EPA has an independent statutory duty to enforce Title VI of the Civil Rights Act of 1964, and its effort to merge distinct requirements has undermined civil rights enforcement and exacerbated whatever “complexity” that civil rights enforcement effort might create.

By contrast, the Federal Highway Administration (FHA) received an administrative complaint filed on behalf of Leaders for Equality and Action in Dayton (LEAD) on August 10, 2011, and issued its finding less than two years later that “African Americans have faced discriminatory impact” as a result of the City of Beavercreek’s decision to deny the Regional Transit Authority’s application to install bus stops near a mall in the City.²⁶ FHA was able to complete its investigation in a timely way despite the fact that complainants raised multiple allegations, including disparate impact claims.²⁷ Most significantly, FHA reached its conclusion that the City’s action had an “impact” without overly burdensome analysis of the impacts – FHA neither evaluated, for example, how many people might be injured or killed as a result of walking down the highway to reach the mall in the absence of bus stops, nor the precise economic loss individuals might sustain if they were denied the additional access to the mall afforded by bus stops. The letter of findings issued by FHA reviews the racial composition of the impacted population and then concludes that, based on the statistics, “it is clear that African Americans disproportionately rely on RTA transit service compared with whites. As a result, African Americans are disproportionately affected....”²⁸

There is no rational basis for using rulemaking as an opportunity to modify timelines for agency action.²⁹ EPA’s backlog of cases, stretching back to 2001, represents decades of delay. As the Center for Public Integrity’s study and the earlier Deloitte Report clearly showed, OCR’s failure to comply with the timelines reflects poor performance on the part of the agency rather than a problem with the regulatory timeline.³⁰

We support a thoughtful re-evaluation of EPA’s Title VI regulations, but believe the re-evaluation should only be used as an opportunity to clarify and strengthen the regulations, rather than to weaken them. Reconsideration of the Title VI regulations provides an opportunity to include formal rights for complainants to participate meaningfully in the administrative process and informal resolution, with provisions to address issues of confidentiality. Such revisions are essential for bringing processes for

²⁵EPA, *Draft Policy Papers Released for Public Comment: Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Thresholds, and Role of Complainants and Recipients in the Title VI Complaints and Resolution Process*, 78 Fed. Reg. 24739, 24740 (Apr. 26, 2013) (“Adversity White Paper”).

²⁶Letter from Warren S. Whitlock, Assoc. Adm’r for Civil Rights, FHA, to Michael Cornell, City Manager, City of Beavercreek, Ohio (June 26, 2013), at 15.

²⁷*Id.* at 4.

²⁸*Id.* at 11.

²⁹See 40 C.F.R. § 7.120 (2010) (OCR to notify complainant and recipient of receipt of the complaint within 5 days and complete the jurisdictional review within 20 days from the acknowledgement of the complaint); 40 C.F.R. § 7.115(c) (2010) (OCR to complete investigation and issue preliminary findings within 180 days of the start of a compliance review or complaint investigation).

³⁰See Lombardi, Buford & Greene, *supra* note 2, and Deloitte Consulting, *supra* note 1.

complaint investigation into line with environmental justice principles. The OCR complaint investigation process has excluded complainants, the community stakeholders, from the decision-making process, which is in direct contradiction to principles of environmental justice.³¹ To address these issues, communication and consultation should, for example, be required at the stage of informal resolution and/or before EPA issues preliminary findings.³² Revised regulations should also make clear that if the Administrator reviews a determination of the Administrative Law Judge, complainants should be notified and given reasonable opportunity to file written statements and present their evidence and arguments to the Administrative Law Judge.³³

D. The Strategic Plan Must Address Current Ambiguities in the Legal Standards and, Particularly, Reject the “Rebuttable Presumption” that Compliance with Environmental Standards Satisfies the Impact Prong of a Disparate Impact Claim.

A robust Title VI compliance program requires that EPA ensure clarity, transparency, and uniformity in application of its legal standards and make clear that those standards comport with civil rights law. Unless OCR clarifies current ambiguities in the legal standards it applies and, particularly, withdraws the rebuttable presumption that compliance with environmental standards satisfies the impact prong of a disparate impact claim, OCR will continue to lack credibility with both communities and recipients.

Goal 2 Benchmark 2 of the Strategic Plan calls for the development of strategic policy guidance, including a Civil Rights Compliance Toolkit, to “provide recipients guidance regarding their civil rights obligations and examples of promising practices for complying with the civil rights laws it enforces.”³⁴ Yet the Strategic Plan is strangely silent on the status of previous guidance documents, how the Toolkit or new guidance documents will address inconsistencies in or harmonize pre-existing guidance documents, or whether OCR will finalize its proposal to withdraw the rebuttable presumption.³⁵

More than a decade ago, EPA published draft guidance documents,³⁶ and many of the signatories to this letter submitted extensive comments at that time.³⁷ EPA has neither

³¹ See *Environmental Justice*, EPA (Oct. 20, 2015), <http://www3.epa.gov/environmentaljustice/>. (“Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”)

³² See 40 C.F.R. 7.120(d)(2) (2010), and if OCR is making a finding, 40 C.F.R. 7.130(b)(1) (2010).

³³ See 40 C.F.R. 7.130(b)(3)(ii) (2010).

³⁴ Strategic Plan, at 13.

³⁵ See Adversity White Paper, *supra* note 25, at 24739-24743.

³⁶ See EPA, *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and the Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance)*, 65 Fed. Reg. 39650 (June 27, 2000) (“Draft Guidance Documents”).

responded to those comments nor, after more than a decade, finalized the substantive standards set forth in the guidance documents.³⁸ Continued reliance on the Draft Guidance Documents raises a host of substantive and procedural questions, not the least of which is a lack of clarity and transparency about the non-discrimination standards to be applied by OCR. The Strategic Plan should include goals and benchmarks for finalizing a clear and uniform set of standards to guide EPA's practices, bring EPA's policies and practices into line with the standards utilized by the Department of Justice and other agencies, and resolve the flawed provisions in the Draft Guidance Documents. While an exhaustive analysis of the Draft Guidance Documents is outside the scope of these comments, we want to underscore the importance of withdrawing the rebuttable presumption.³⁹

Historically, EPA has tended to interpret its Title VI responsibilities and authorities through the lens of traditional environmental regulation—relying on a presumption that protection for communities is adequate if recipients are in compliance with environmental statutes. This approach is inconsistent with civil rights law and has failed to eliminate the adverse or disparate impacts to environmental justice communities that EPA's Title VI regulations seek to forbid. We strongly urge EPA to move away from reliance on the traditional environmental regulatory approach to discrimination issues and to apply the congressionally mandated civil rights framework instead. As all of us have previously urged, OCR must make clear that technical compliance with environmental laws and regulations is not the measure of whether programs or activities have an “adverse impact” within the meaning of civil rights law. In particular, the Toolkit and/or any other final Title VI guidance documents should remove any confusion caused by the *Select Steel* decision.⁴⁰ Compliance by recipients with standards adopted pursuant to the Clean Water Act, Clean Air Act, or other environmental laws does not mean that persons are not adversely affected by the recipients' programs or activities. Environmental statutes, regulations, and standards are the outcome of political and administrative processes, which take into account an array of competing interests and criteria. As was the case with *Select Steel*, these standards may involve averaging emissions over large geographical areas that,

³⁷ See generally Ctr. on Race, Poverty & the Env't, Cal. Rural Legal Assistance Found., *Comments on Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits and Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (Aug. 26, 2000), available at http://www.epa.gov/ocr/docs/t6com2000/t6com2000_071.pdf; see also Eileen Gauna, *EPA at 30, Fairness in Environmental Protection*, 31 Env'tl. L. Rev. 10528 (2001) (analyzing the Investigatory Guidance).

³⁸ On March 21, 2006, EPA issued *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs*, 71 Fed. Reg. 14207 (offering approaches to recipients of federal funds related to public involvement).

³⁹ Additional issues include, for example, that the Draft Guidance Documents unnecessarily heighten the burden for measuring impact by suggesting that OCR must find a “significant” adverse impact, importing a significance standard. A narrow interpretation of the term “significant” can set the bar so high that it would effectively gut Title VI enforcement. Reliance on regulatory significance levels can also ignore the contributing effects of cumulative impact and synergistic risks, among other things. Instead, EPA should recognize that adverse impact above *de minimis* levels can constitute a violation. EPA should also clarify how the “cost and technical feasibility” of less discriminatory alternatives will be assessed. As the Draft Guidance Document is currently written, consideration of cost and technical feasibility could obliterate the obligation not to discriminate.

⁴⁰ *Select Steel*, *supra* note 24.

if viewed in isolation, can hide disparities. They are, again, not the benchmark for a determination of “impact.” Among other things, environmental standards do not fully capture harms to public health, the environment, or a population’s way of life. Moreover, these standards change over time precisely because they are found to be insufficiently protective.⁴¹

We note, also, that the Draft Guidance Documents already contain some language clarifying that “[c]ompliance with environmental laws does not constitute *per se* compliance with Title VI.”⁴² We agree. Although the provisions in the Draft Guidance Documents state that compliance with environmental laws may not be *per se* compliance with Title VI, as a practical matter environmental regulatory standards largely determine Title VI compliance because of the presumption of compliance that EPA uses if environmental standards are not exceeded.⁴³ Other sections of the Draft Guidance Documents currently reinforce the notion that environmental standards will be used to determine whether a program or activity has an “impact.” This is in error. While noncompliance with an environmental or health standard may be relevant to a finding of adverse impact in some contexts, compliance with a federal, state, or local environmental standard does not negate otherwise valid evidence of harm or disparity under civil rights law.

On March 20, 2013, our groups and partners submitted comments on the Adversity White Paper, which are incorporated herein.⁴⁴ As we stated in 2013, EPA’s continued reliance on statutory and regulatory environmental and health standards for determining adversity is inconsistent with civil rights laws and is infeasible.⁴⁵ The ambiguous status of the Adversity White Paper compounds confusion on this key issue for communities, investigators and recipients alike. At this point, creating a compendium of guidance documents or adding new documents to the mix would only exacerbate the confusion

⁴¹ *Primary National Ambient Air Quality Standards for Nitrogen Dioxide*, 75 Fed. Reg. 6474, 6480 (Feb. 9, 2010) (to be codified at 40 C.F.R. pts. 50 & 58) (discussing new evidence regarding the relationship between NO₂ exposure and health effects). Along these lines, we note the decision of the Environmental Appeals Board (EAB) in which the EAB concluded that EPA erred when it relied solely on compliance with the then-existing annual National Ambient Air Quality Standard (“NAAQS”) for nitrogen dioxide (NO₂) as sufficient to find that the Alaska Native population would not experience “adverse human health or environmental effects from the permitted activity.” Though this decision arose in the context of the EJ Executive Order, and also turned on the fact that the NO₂ air quality standard was under revision, it is clear that current compliance with an environmental standard is not determinative of whether an action or policy has an adverse impact. Though EAB rulings have not uniformly required the Agency to take into account newer data regarding the sufficiency of environmental standards to protect public health when issuing permits, (see, e.g., *Shell Offshore, Inc., OCS Appeal Nos. 11-05, 11-06 & 11-07*, 82-83 (EAB Mar. 30, 2012), available at <http://goo.gl/TzLGql>), there is no doubt that standards in force to implement environmental laws at any given time do not and cannot capture all impact of a challenged activity.

⁴² *Draft Title VI Guidance for EPA Assistance Recipients*, *supra* note 36, at 39680.

⁴³ *Id.* (“[W]here the area in question is attaining that [NAAQS] standard, the air quality in the surrounding community will generally be considered presumptively protective and emissions of that pollutant should not be viewed as ‘adverse’ within the meaning of Title VI.”).

⁴⁴ *Comments on U.S. Environmental Protection Agency Draft Policy Papers, Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Standards* (Released Jan. 24, 2013); *Title VI of the Civil Rights Act of 1964: Draft Role of Complainants and Recipients in the Title VI Complaint and Resolution Process* (Released Jan. 25, 2013) (Mar. 20, 2013) (attached).

⁴⁵ *Id.* at 5.

unless OCR harmonizes pre-existing guidance and clarifies the legal standards. Failure to require resolution of current ambiguities in the legal standards and to finalize the Adversity White Paper are gaping holes in the Strategic Plan and must be addressed.

E. The Strategic Plan Should Explicitly Address How EPA's Program will Incorporate and Promote the Objectives of Environmental Justice.

The Strategic Plan should aim to incorporate and promote the objectives of environmental justice and set benchmarks for establishing concrete mechanisms for reaching this goal. As a starting point, the Strategic Plan itself failed to indicate whether OCR has taken or will take any specific steps to involve environmental justice advocates or populations in the development of the Plan or in the reevaluation of EPA's Title VI regulations. The Strategic Plan appears to have been developed internally by OCR staff, and although it is now being distributed for comment, ideas are set forth with no clear evidence that input was solicited from the populations and communities that are impacted by environmental injustice and discrimination on the basis of race and ethnicity. Moreover, OCR's method of seeking input on the Strategic Plan seems to have been reliant on communication through the internet, which is not a sufficient means of reaching environmental justice populations, for the reasons outlined below. These are shortcomings with respect to the Strategic Plan as a whole and, also, with respect to specific aspects of the Plan, such as Goal 2 Benchmark 4, which calls for OCR to develop an outreach and communication plan. The Strategic Plan should state explicitly that OCR will consult with the affected populations and communities on the development of this plan.

The Strategic Plan's heavy reliance on the internet and electronic media for communications is misplaced. For example, Goal 1 Benchmark 6 focuses on posting of information on the OCR website, Goal 2 Benchmark 2, indicates that EPA will provide the toolkit, decisional documents, and settlement agreements on OCR's website, and the third and fourth bullets of Goal 2 Benchmark 4 emphasize the use of the OCR website to ensure transparency, and using training videos, webinars, and social media for training and outreach. Yes, relevant materials should be posted on the website. But environmental justice populations are much more likely than other segments of the population to lack access to the internet and other electronic media, and over-reliance on electronic media means that environmental justice populations will not be provided with notice of actions that affect them. The Strategic Plan nonetheless contains no provisions for the use of radio, television, community and church newsletters, and other media that are much more likely to reach environmental justice populations.

The absence of provisions for the use of alternative media is a particular problem for populations comprised of people whose primary form of communication is oral. The second bullet point of Goal 4 Benchmark 4 addresses translation of materials into the most prominent languages spoken by persons with limited English proficiency, but it says nothing about what is to be done in communities where a significant proportion of the population may not read. There are, for example, few members of the Navajo Nation who

read Navajo, yet many members of that Nation speak Navajo only.⁴⁶ The same is true of other Native American languages, including those spoken by immigrants from indigenous communities in Mexico and Guatemala.

The Strategic Plan's scant attention to community input raises concern about OCR's commitment to transparency and stakeholder engagement. We remain concerned that there will be only limited opportunities for environmental justice communities to participate in EPA's efforts to amend 40 C.F.R. Part 7 until *after* EPA publishes proposed changes in the Federal Register. We appreciate OCR's recent efforts to reach out to the signatories to provide notice of its plans to engage in rulemaking and to issue a Case Resolution Manual, but also note that OCR staff indicated that the Notice of Proposed Rulemaking was likely to be published within the coming month. At this point, the Agency is likely to be committed to the course of action reflected in its proposal, and subsequent input from the environmental justice community is not likely to have much effect. Conversely, through proactive involvement of the environmental justice community, EPA can earn trust and respect for its efforts to ensure meaningful enforcement and implementation of the Civil Rights Act. The Strategic Plan should explicitly address and prioritize meaningful engagement by environmental justice communities and commit to benchmarks to align OCR activities with this goal.

F. Increasing Reliance on Voluntary Compliance and ADR Raises Significant Questions of Transparency, Stakeholder Participation, and Fairness, Which the Strategic Plan Should Address.

The Strategic Plan calls on OCR to “[f]ully utilize all resolution options available to OCR, including informal resolution and Alternative Dispute Resolution.”⁴⁷ Goal 1 Benchmark 1 establishes that OCR should emphasize early informal resolution and, again, “utilize all resolution options.”⁴⁸ This focus on both voluntary resolution and ADR raises significant issues. First, neither mechanism for resolving complaints is transparent. In the case of voluntary resolution, complainants have been entirely locked out of negotiations.⁴⁹ And confidentiality is often seen as necessary to the ADR process, as Guidance from the Federal Alternative Dispute Resolution Council at the Department of Justice emphasizes:

Guarantees of confidentiality allow parties to freely engage in candid, informal discussions of their interests in order to reach the best possible settlement of their claims. A promise of confidentiality allows parties to speak openly without fear that statements made during an ADR process

⁴⁶ See generally Brian Bielenberg, *Indigenous Language Codification: Cultural Effects*, in *Revitalizing Indigenous Languages* 103 (Jon Reyhner et al., eds., 1999), available at http://jan.ucc.nau.edu/~jar/RIL_8.html (traditional Navajos view written Navajo as alien).

⁴⁷ Strategic Plan, at 5.

⁴⁸ *Id.* at 10.

⁴⁹ See, e.g., Plaintiffs-Appellants' Opening Brief, *Garcia v. McCarthy*, No. 14-15494 (9th Cir. May 1, 2015), at 12-13 (complainants' rendering of process for reaching voluntary compliance agreement in *Angelita C.* after OCR made preliminary finding of discrimination).

will be used against them later. Confidentiality can reduce posturing and destructive dialogue among parties during the settlement process.⁵⁰

In the ADR process, confidentiality can even extend to the very fact that the parties are participating in discussions, restricting communication by complainants and their accountability to the larger community of stakeholders.

Moreover, as currently undertaken by OCR, both voluntary resolution and ADR disempower community-based stakeholders – voluntary resolution by excluding complainants from negotiations and ADR by failing to level the playing field unless technical assistance and other steps are taken to support community involvement. If there is increased reliance on alternative mechanisms for reaching resolution, then the Strategic Plan should include goals and benchmarks to address the lack of transparency, stakeholder participation, and fairness in these negotiations.

G. OCR Should Use Its Regulatory Authority to Ensure Civil Rights Compliance in the Environmental Programs It Administers.

Finally, the Strategic Plan should call on EPA to use its regulatory authority pursuant to Title VI to ensure civil rights compliance in the environmental programs that it administers, such as the Clean Air Act and Clean Water Act permitting programs. These can be program-specific requirements, incorporated in program regulations but authorized by Section 602 of the Civil Rights Act of 1964,⁵¹ which will help bridge the disconnect between the fiefdoms within EPA and incorporate civil rights more broadly into the agency's actions.⁵²

Thank you for this opportunity to comment on the External Compliance and Complaints Program Strategic Plan: Fiscal Year 2015–2020. Again, we appreciate your recognition of the importance of Title VI enforcement and your consideration of these issues.

⁵⁰ *Confidentiality in Federal Alternative Dispute Resolution Programs*, 65 Fed. Reg. 83085 (Dec. 29, 2000).

⁵¹ 42 U.S.C. § 2000d-1 (“Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity..., is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.”).

⁵² See, e.g., Ctr. on Race, Poverty & the Env’t. et al., *Climate Justice Comments on Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, Docket No. EPA-HQ-OAR-2013-0602 at 2, 7-8 (Dec. 1, 2014) (calling for EPA to address its Title VI obligation by proposing additional regulatory language as part of the Clean Power rule that directs each state to include federally enforceable provisions in its state to ensure compliance with Title VI and requiring EPA to make a finding that state plans ensure such compliance when EPA reviews the plans).

Sincerely,



Marianne L. Engelman Lado
On behalf of the following signatories:

Marc Brenman
IDARE LLC*

Esther Calhoun
Black Belt Citizens Fighting for Peace
and Justice

Amy Laura Cahn
Public Interest Law Center

Veronica Eady
Conservation Law Foundation

Marianne L. Engelman Lado
Earthjustice

Leslie Fields
Sierra Club

Robert Garcia
The City Project

Michael Hansen
GASP

Sara Imperiale
Natural Resources Defense Council

Denny Larson
Community Science Institute – CSI for
Toxic Crime

Gregg P. Macey
Brooklyn Law School*

Vincent M. Martin
Original United Citizens of SW Detroit
Human Synergy Works

Douglas Meiklejohn
New Mexico Environmental Law Center

Vernice Miller-Travis
Skeo Solutions*

Brent Newell
Center for Race, Poverty & the
Environment

Joseph Rich
Lawyers' Committee for Civil Rights
Under Law

Virginia Ruiz
Farmworker Justice

Theodore M. Shaw
UNC Center for Civil Rights

Ronald Smith
Ashurst Bar/Smith Community
Organization

Rashida Tlaib
Maurice and Jane Sugar Law Center for
Economic and Social Justice

Jalonnie White-Newsome
WE ACT

Omega Wilson
West End Revitalization Association

Chris Winter
Crag Law Center

*For identification only

Exhibit 6

To: CN=Loren Hall/OU=DC/O=USEPA/C=US@EPA[]
Cc: CN=Daniel Isales/OU=ESC/OU=R3/O=USEPA/C=US@EPA;CN=Helena Wooden-Aguilar/OU=DC/O=USEPA/C=US@EPA;CN=Katherin Hall/OU=R8/O=USEPA/C=US@EPA[]; N=Helena Wooden-Aguilar/OU=DC/O=USEPA/C=US@EPA;CN=Katherin Hall/OU=R8/O=USEPA/C=US@EPA[]; N=Katherin Hall/OU=R8/O=USEPA/C=US@EPA[]
From: CN=Joann Asami/OU=R9/O=USEPA/C=US
Sent: Wed 7/27/2011 4:06:22 PM
Subject: Re:angelita c

thanks loren. can you send me the recent drafts of the angelita c q's and a's and communication strategy?

thanks

From: Loren Hall/DC/USEPA/US
To: Joann Asami/R9/USEPA/US@EPA
Cc: Daniel Isales/ESC/R3/USEPA/US@EPA, Helena Wooden-Aguilar/DC/USEPA/US@EPA, Katherin Hall/R8/USEPA/US@EPA, Tom Walker/DC/USEPA/US@EPA, Mary O'Long/DC/USEPA/US@EPA
Date: 07/26/2011 03:53 PM
Subject: Re: Fw: Title VI

Hi Jo Ann-

Things are still moving along. Concerning the Kettleman Hills facility ("Padres") case, I believe you will

Non-Responsive

Ex. 5 - Deliberative

Ex. 5 - Deliberative

Hope this helps. Welcome back!

Loren

From: Joann Asami/R9/USEPA/US
 To: Daniel Isales/ESC/R3/USEPA/US@EPA, Loren Hall/DC/USEPA/US@EPA
 Date: 07/26/2011 12:52 PM
 Subject: Fw: Title VI

hello
 any update on angelita c or kettleman?
 just returned to the office and should reply to jared if there have been any developments since 7/21 (patrick's last email to him).
 thanks!
 jo ann
 ----- Forwarded by Joann Asami/R9/USEPA/US on 07/26/2011 09:48 AM -----

From: Joann Asami/R9/USEPA/US
 To: Helena Wooden-Aguilar/DC/USEPA/US@EPA, Katherin Hall/R8/USEPA/US@EPA
 Date: 07/26/2011 09:10 AM
 Subject: Fw: Title VI

hi gals
 looks like patrick is now out of office. do you have any news on angelita, kettleman?
 thanks!
 jo ann

----- Forwarded by Joann Asami/R9/USEPA/US on 07/26/2011 09:09 AM -----

From: Joann Asami/R9/USEPA/US
 To: Patrick Chang/DC/USEPA/US@EPA
 Date: 07/26/2011 09:08 AM
 Subject: Re: Title VI

hello
 back from the most exhausting week away that i have had in a long time. checking in. any news from crpe front on kettleman?
 how about angelita c? where are we on the q's and a's and communication strategy?
 also got a curious email from our regional ocr director informing me that rafael got the ok to change the title vi regs re 180 day timeframe.
 thanks
 jo ann

From: Patrick Chang/DC/USEPA/US
 To: Jared Blumenfeld/R9/USEPA/US@EPA
 Cc: Joann Asami/R9/USEPA/US@EPA, Teddy Ryerson/R9/USEPA/US@EPA
 Date: 07/21/2011 09:46 AM
 Subject: Re: Title VI

AREL00015135

ED_001369_00002457-00080

Hi Jared,

Ex. 5 - Deliberative

Patrick Sungwook Chang
US EPA -- Senior Counsel for External Civil Rights
202/564-1528 (o); 202/564-1428 (f)

From: Jared Blumenfeld/R9/USEPA/US
To: Patrick Chang/DC/USEPA/US@EPA
Cc: Joann Asami/R9/USEPA/US@EPA, Teddy Ryerson/R9/USEPA/US@EPA
Date: 07/21/2011 10:26 AM
Subject: Title VI

Patrick:

Non-Responsive

an

Additionally, you may have seen that California recently appointed a new head of their EPA, Matt Rodriquez - <http://blogs.sacbee.com/capitolalertlatest/2011/07/jerry-brown-appoints-doj-lawye.html> and that a new head of DPR is the next hire. Where are we on final resolution and announcement of Angelita C settlement?

Thanks,

☐

Exhibit 7

COMMENTS OF LAWYERS' COMMITTEE OF CIVIL RIGHTS UNDER LAW SUBMITTED TO THE U.S. COMMISSION ON CIVIL RIGHTS

MARCH 2, 2016

The Lawyers' Committee is a nonprofit civil rights organization founded in 1963 by the leaders of the American bar at the request of President Kennedy to help defend the civil rights of racial minorities and the poor. For over fifty years, the Lawyers' Committee has been at the forefront of many of the most significant cases involving race and national origin discrimination and has actively advocated for environmental justice since the 1990s.

The U.S. Commission on Civil Rights is investigating civil rights environmental justice enforcement in low-income communities of color pursuant to Title VI of the Civil Rights Act of 1964. During the course of this investigation, the Lawyers' Committee was asked to submit a comment regarding an important environmental justice matter in which the Federal Highway Administration (FHWA) entered into a settlement of a Title VI complaint against with the Texas state highway agency concerning the Harbor Bridge project in Corpus Christi, Texas.

I. INTRODUCTION

In 2003, the Commission investigated the implementation of Executive Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994), at § 1-101, and Title VI of the Civil Rights Act, 42 U.S.C. § 2000d *et seq.*, as tools for achieving environmental justice and found that the U.S. Environmental Protection Agency ("EPA") and the other four federal agencies had not fully implemented the Executive Order and Title VI in the environmental decision-making context. U.S. Comm'n on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice* 9 (2003) ("Not in My Backyard"). The Commission's report focused on the need for reform:

Federal agencies must more fully integrate environmental justice into their core

missions and put in place evaluation criteria and accountability measures to assess policies and programs. Without more concerted effort on the part of federal agencies to promote and ensure environmental justice, and appropriate congressional action, minority and low-income communities all across this nation will continue to bear the unfair risk of exposure to environmental hazards.

Id. at 9. More than a decade later, civil rights enforcement in the environmental justice context, particularly at EPA, remains meagre and low-income communities of color continue to bear a disproportionate burden of exposure to environmental hazards. However, the processing and response of the Federal Highway Administration (FHWA) to the Title VI environmental justice complaint filed by residents of the Hillcrest and Washington-Coles neighborhoods in Corpus Christi, Texas in 2015 provides an example of progress in this increasingly important area of civil rights enforcement. This comment is designed to describe the process that FHWA followed in investigating and working out a settlement of this matter and how it is a significant improvement over some of the major shortcomings in the EPA enforcement of Title VI that have been raised repeatedly for over 15 years.

BACKGROUND

The Corpus Christi Title VI complaint was filed by the Texas RioGrande Legal Aid and University of Texas Law Environmental Clinic on behalf of low income and minority residents from the Hillside and Washington-Coles communities.¹ It alleged that a major bridge replacement known as the Harbor Bridge Project which had been proposed by the Texas Department of Transportation (TxDOT) to be financed in part by federal funding from the Department of Transportation violated the civil rights of residents of the Hillcrest and

¹ Attorneys for the complainants are preparing an article for the *Clearinghouse Review* concerning this matter and will provide it to the Commission when it published. The Texas Low Income Housing Information Service headed by John Henneberger assisted these attorneys throughout the process and the Lawyers' Committee provided input during the negotiations of the settlement.

Washington-Coles neighborhoods as a result of a proposed road to be built as part of the project that would cause unacceptable disparate harmful impacts to residents of these neighborhoods, including isolation, noise, air pollution, and other impacts.

The current Harbor Bridge is located at the mouth of the Corpus Christi ship channel. The new bridge would be moved farther up the channel and be raised by 68 feet to allow the larger ships that can pass through the new Panama Canal to access the Port of Corpus Christi. The highway that connects to the bridge would be relocated away from downtown Corpus Christi and would bisect the Hillcrest and Washington-Coles neighborhoods, Corpus Christi's historic black communities. These neighborhoods have a long history of past discrimination preceded the Harbor Bridge project stretching back to the days of Jim Crow segregation of African Americans.

The Hillcrest neighborhood was first platted in 1916 and developed in the 1930s and 40s, along with the Washington-Coles and other nearby neighborhoods, prior to the industrialization of the Corpus Christi Ship Channel. At that time, Washington-Coles was specifically designated as the neighborhood for black residents. In 1944, the City Council allowed black homeowners to move into the Hillcrest neighborhood after being informed that Washington-Coles had no more room for new residents. Over the next two decades, Hillcrest transformed from a predominantly white community to a predominantly black community. Despite this history of segregation, the Northside neighborhoods have a history of well-attended schools, vibrant churches, restaurants, locally owned businesses, and community activism. The Harlem Theater on North Staples was the only theater with open seating for blacks. The Old Bayview Cemetery, on Waco Street, is the city's oldest, with graves dating back to 1845, including those of the City's first mayor and sheriff, pioneer families, and Buffalo Soldiers.

But, over time, decisions to locate undesirable land uses near the neighborhoods took their toll. Interstate 37 was constructed through the neighborhoods, dividing them and isolating current day Hillcrest and Washington-Coles from the rest of residential Corpus Christi. Land around the neighborhoods was developed for Port and industrial purposes, including petrochemical refineries. Today, the Hillcrest and Washington Coles neighborhoods are surrounded by oil refineries, the Port of Corpus Christi, and highways. Residents live with air pollution, noxious odors, sirens, and industrial flares. Industrial accidents have caused evacuations as well as "shelter-in-place" warnings, and residents live the constant fear of a major accident or pollution release. The Harbor Bridge Project would exacerbate these problems.

II. THE FHWA's PROCESSING OF THE TITLE VI COMPLAINT

One of the major problems in environmental justice enforcement at EPA is a longstanding record of noncompliance with the regulatory deadlines, a record that has caused real harm to communities burdened by the effects of environmental harm. This record has been well-documented -- in the 2003 U.S. Civil Rights Commission Report, "Not in My Backyard,"² a 2011 report prepared by Deloitte Consulting, "Evaluation of the EPA Office of Civil Rights,"³ and in a recent investigation by Center for Public Integrity.⁴ It is perhaps illustrated most vividly in *Rosemere Neighborhood Ass'n v. EPA*, 581 F.3d 1169 (9th Cir. 2009) which sets forth the pervasive failure of EPA to meet regulatory deadlines

² U.S. Commission on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice*, October 2003, at 57, available at <http://www.usccr.gov/pubs/envjust/ej0104.pdf>

³ Deloitte Consulting, LLP, *Evaluation of the EPA Office of Civil Rights, Final Report*, March 21, 2011, available at <https://assets.documentcloud.org/documents/723416/epa-ocr-audit.pdf>

⁴ Talia Buford, *Thirteen years and counting: anatomy of an EPA civil rights investigation*, Ctr. for Pub. Integrity (Aug. 7, 2015), <http://goo.gl/qGpYBS>

The processing of the Corpus Christi Title VI complaint by the FHWA is in stark contrast to this pattern of enforcement and instructive for any federal agency's Title VI program. The complaint was received by FHWA on March 13, 2015. FHWA began its investigation soon after that and issued a letter accepting the complaint and beginning the investigation on April 3rd. FHWA Office of Civil Rights staff were responsible for the investigation and immediately initiated a proactive investigation, making visits to Corpus Christi several times which included meetings with residents in the impacted neighborhoods to explain the status of the investigation and possible outcomes. FHWA also put the Harbor Bridge Project on hold during the investigation which created time and leverage for the investigation and negotiations to occur in a timely matter.

A second important environmental justice enforcement issue has long been how to determine when a Title VI disparate impact violation has occurred. Historically, EPA has been unwilling to find a civil rights violations unless one of the standards set by EPA pursuant to environmental protection statutes has been violated. In fact, it has applied a presumption that Title VI is not violated if there is compliance with the environmental standards set by these statutes. This practice often results in ignoring other important factors, including the big picture of all of the burdens a community has to bear, how those burdens compare to those of other communities and the history of discrimination in the community impacted. When Title VI compliance is found based on this narrow presumption, it does not mean that minority populations are not adversely affected by federally funded programs. Indeed, most of the environmental standards that exist don't consider cumulative impacts of multiple pollutants and sources of pollution and don't consider other burdens the community may experience that make the negative impacts of pollution on that population more likely. In short, relying on

environmental standards does not fully capture the harms to public health or a population's way of life.

Although FHWA never issued formal Title VI findings of a violation in the Harbor Bridge matter, it is the understanding of the attorneys who represented and assisted the complainants that FHWA avoided this kind of cramped analysis of Title VI compliance. Applying disparate impact analysis in an environmental context can be difficult. Therefore, complainants reached out to both the Department of Housing and Urban Affairs (HUD) and EPA, asking them to confirm the disparate impacts of the bridge on the minority communities. FHWA was helped in this regard by drawing on the Department of Justice's civil rights expertise in applying a disparate impact analysis to its determination of Title VI compliance. Especially important, FHWA appeared to consider the cumulative impact of the project on the community as well as the likely impacts on the community, regardless of whether any environmental standards were violated.

Another ongoing problem in environmental justice enforcement has been the failure to involve the complainants and members of an affected community in the Title VI investigation and in discussions of a remedial plan designed to settle the complaint. The worst example of this is found in an EPA complaint styled *Angelita C. v. California Department of Pesticide Regulation*. In this case, twelve years after the filing of a Title VI complaint, EPA concluded that there was sufficient evidence to make a preliminary finding of a Title VI violation as a result of the disparate impact on Latino children in California from the application of a pesticide near the children's school. However, at that point, not only did EPA fail to inform complainants of

this finding, it then proceeded to negotiate a settlement agreement with absolutely no involvement of the complainants in the negotiating process.⁵

By contrast, in the Harbor Bridge review FHWA sought input from complainants and members of the Hillside and Washington-Coles communities from the time of the initial investigation through negotiations concerning the settlement agreement entered on December 17, 2015. In addition, other federal agencies participated in the process. Community involvement in the negotiations made it apparent that there would be neighborhood-wide impacts from the project outside of just the right-of-way which led to discussions of a broad remedy that would address impacts to an entire neighborhood.

Even before the Title VI complaint was filed, EPA and the Department of Housing and Urban Development (HUD) had filed comments about the project echoing concerns being expressed by the affected community about the addition of air pollution and soil contamination to an already overburdened community, noise impacts, reductions in property values, and impacts to nearby subsidized housing residents. During negotiations of the settlement agreement, complainants and the FHWA sought input from HUD and EPA to assist in crafting a settlement. The Department of Justice also played a role in trying to coordinate the actions of these agencies through the Civil Rights Division's Federal Coordination and Compliance Section. This Section is tasked with ensuring that all federal agencies consistently and effectively enforce civil rights statutes and Executive Orders that prohibit discrimination in federally conducted and assisted programs and activities and is especially well-suited for promoting this kind of coordination.

^{5 5} The *Angelita C* case is discussed in more depth in *Garcia v. McCarthy*, No. 13-cv-03939-WHO, 2014 WL 187386 at *2 (N.D. Cal. Jan. 16, 2014).

It was also clear early in the negotiating process that a satisfactory neighborhood-wide settlement could not be reached and funded unless a number of parties who were not directly involved in the Title VI complaint participated, including: (1) the Port of Corpus Christi, with a keen interest in seeing the Harbor Bridge constructed, (2) the Corpus Christi Housing Authority, responsible for the public housing that would be directly impacted by the bridge, and (3) the City of Corpus Christi. Each of these entities contributed to the settlement and the contribution of the Port, which is funding \$20 million of the settlement, was crucial to the settlement. In sum, FHWA's willingness to include other federal and local agencies in settlement discussions was crucial to this settlement.

The multi-million dollar settlement has been lauded as a landmark by Dr. Robert Bullard, Dean of the School of Public Affairs at Texas Southern University and known as the father of environmental justice. It resulted from a collaborative effort by the Port of Corpus Christi, City, the Housing Authority of Corpus Christi; the Federal Highway Administration (FHWA); and the Texas Department of Transportation (TxDOT). While complainants and neighborhood residents participated in the negotiating process, they are not a signatory to the agreement. Specifically, the agreement focuses on enhanced mitigation options for affected residents and includes:

- A voluntary relocation program for homeowners and renters to relocate to a comparable home in a healthy environment, including relocation assistance by a relocation counselor, moving costs for both homeowner and renters, title and closing costs, appraised value of the original home and the comparable home ;
- Financial assistance for neighborhood churches, small businesses, and owners of rental properties that choose to relocate to comparable properties;
- A City Liaison in the neighborhood for four years to provide information on their options pursuant to the settlement and to connect residents to City services such as weatherization and home improvement programs;

- Improved parks, including a new historic park, to be designed with input from a community advisory board, that will recognize the unique history and contributions of Corpus Christi's historic black neighborhoods;
- Mitigation of construction impacts, such as noise, dust, air pollutants, and traffic; and
- Relocation of tenants in a public housing property impacted by the project.

III. CONCLUSION

There are several positive aspects of the Harbor Bridge Title VI matter for the Commission to consider in evaluating Title VI environmental justice enforcement. In particular, the timeliness of the investigation and resolution of the matter and involving complainants and affected communities, as well as other federal agencies and local governmental entities, in the Title VI process should be standard practice. Environmental justice matters have a broad impact and typically raise complex factual and legal issues. Reaching out for assistance and coordination is important in fully addressing these issues.

At the same time, there are areas of this process that can be improved. First, while it is our understanding that FHWA sought assistance from the Department of Justice in applying a disparate impact analysis to this matter, explicit standards and guidance for analyzing disparate impact in the environmental justice context is badly needed, not only for EPA but for all agency Title VI programs. Second, it is not clear that the Department of Justice's Federal Coordination and Compliance Section has played the type of coordinating role in other environmental justice matters that it did in the Harbor Bridge matter. It should increase this role in the future. Third, while complainants were consulted in negotiating the settlement agreement, they were not permitted to be signatories to the settlement agreement and this will complicate any future enforcement of the agreement that may be necessary. It is not clear if this is standard practice of federal agencies in all Title VI enforcement matters. But as third party beneficiaries of such

settlements, complainants should be signatories to them. Indeed, in an early Title VI enforcement matter by the Department of Transportation, it appears that complainants were part of the settlement agreement. : See

http://www.fhwa.dot.gov/environment/environmental_justice/case_studies/case3.cfm and

<https://www.dropbox.com/s/8nbx2ns3prf9x6h/North%20Carolina%20Title%20VI%20Article%2022ClearinghouseRev4422.pdf?dl=0>.

ACLU of Wisconsin * Alaska Community Action on Toxics * Americas for Conservation * Arbor Hill Environmental Justice, Inc. * Ashurst Bar/Smith Community Organization * Asian Pacific Policy & Planning Council * Azul * Bike San Gabriel Valley * Black Belt Citizens Fighting for Health and Justice * California Coastal Protection Network * Californians for Renewable Energy * Cape Fear River Watch * Center for Community Action & Environmental Justice/Centro de Acción Comunitaria y Justicia Ambiental * Chicago Area Fair Housing Alliance * Center for Biological Diversity * Center on Race, Poverty & the Environment * The City Project * Clean Water Action * Coastal Carolina Riverwatch * Concerned Citizens of West Baden Community * Conservation Law Foundation * Crystal Coast Waterkeeper * Detroiters Working for Environmental Justice * Earthjustice * Environmental and Climate Justice Committee, NAACP, Houston Branch * Farmworker Justice * Gasp * Golden Gate University School of Law, Environmental Law and Justice Clinic * GreenLatinos * Human Synergy Works * Kingdom Living Temple * Land Loss Project * Lawyers' Committee for Civil Rights Under Law * LatinoJustice PRLDF * League of United Latin American Citizens (LULAC) * Los Angeles Waterkeeper * NAACP Legal Defense & Educational Fund, Inc. * NRDC * New Alpha Community Development Corporation * New Mexico Environmental Law Center * North Carolina Environmental Justice Network * North Shore Waterfront Conservancy of Staten Island * Open Futures Society * Original United Citizens of SW Detroit * PenderWatch & Conservancy * People Organized for Westside Renewal (POWER) * Poverty & Race Research Action Council * Public Interest Law Center of Philadelphia * Rural Empowerment Association for Community Help (REACH) * San Gabriel Mountains Forever * Sierra Club * Southern Alliance for Clean Energy * Southern Environmental Law Center * Surfrider * Waterkeeper Alliance * WE ACT for Environmental Justice * West End Revitalization Association * The Whitney M. Slater Foundation * Woodberry & Associates

Marc Brenman * Robert D. Bullard * Mike Giles * Ellis Long * Gregg Macey * Vernice Miller-Travis * Byron E. Price * Mary Leila Schaeffer * Ellen R. Shaffer * Beatriz Sosa-Prado

March 14, 2016

Velveta Golightly-Howell
Director
Lilian Dorka
Deputy Director
Jeryl Covington
Environmental Protection Specialist
US Environmental Protection Agency
Office of Civil Rights
Mail Code 1201-A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Online and by mail

Re: Comments on Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency, EPA-HQ-OA-2013-0031

Dear Director Golightly-Howell and the Office of Civil Rights,

The undersigned organizations and individuals submit these comments on Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency, Docket ID No. EPA-HQ-OA-2013-0031, 80 Fed. Reg. 77,284 (proposed Dec. 14, 2015). Signatories include community groups that have filed complaints under Title VI of the Civil Rights Act of 1964 (“Title VI”), 42 U.S.C. § 2000d *et seq.*, with the Office of Civil Rights (“OCR”) and have substantial experience with the Environmental Protection Agency’s (“EPA”) failure to create and implement a meaningful Title VI compliance and enforcement program. Signatories also include residents of communities struggling with multiple sources of contamination that have long ago stopped filing complaints to challenge discriminatory practices, despairing that EPA lacks the political will to enforce the law. We write, collectively, to emphasize the urgent need for OCR to apply its scarce resources to the critical environmental problems affecting countless communities, rather than weakening civil rights enforcement by eliminating key deadlines and increasing agency discretion.

We write in the midst of a crisis in Flint, Michigan, wondering what might have been different had OCR taken effective enforcement action against the Michigan Department of Environmental Quality (“DEQ”) in even one of the many complaints filed against that agency.¹ And there are many other communities that are waiting for OCR to take meaningful action to address their complaints, from Uniontown, Alabama, an 87% African American community

¹ See, e.g., *In re Mich. Dep’t of Env’tl. Quality*, EPA File No. 01R-94-R5 (EPA OCR 1994) (open complaint against Michigan DEQ regarding the Genessee Power Station, a new wood-waste energy facility in Flint, Michigan); *In re Mich. Dep’t of Env’tl. Qual.*, EPA File No. 05R-98-R5 (EPA OCR 1998) (notorious *Select Steel* case against DEQ regarding the decision to permit a steel recycling plant in Flint, for which EPA made a finding of “no adverse impact” despite facility emissions of toxics such as mercury); *In re Mich. Dep’t of Env’tl. Quality*, EPA File No. 09R-98-R5 (EPA OCR 1998) (complaint regarding DEQ decision to permit incinerator in Dearborn Heights rejected as untimely); *In re Mich. Dep’t of Env’tl. Quality*, EPA File No. 17R-99-R5 (EPA OCR 1999) (complaint against DEQ regarding hazardous waste injection well, dismissed with a finding of “no disparate impact”); *In re Mich. Dep’t of Env’tl. Quality*, EPA File No. 18R-99-R5 (EPA OCR 1999) (complaint against DEQ regarding hazardous waste injection wells, rejected as untimely); *In re Mich. Dep’t of Env’tl. Quality*, EPA File No. 21R-99-R5 (EPA OCR 1999) (complaint against DEQ regarding hazardous injection wells dismissed on other grounds); see generally U.S. EPA, Complaints Filed with EPA under Title VI of the Civil Rights Act of 1964, <http://www.epa.gov/ocr/complaints-filed-epa-under-title-vi-civil-rights-act-1964> (last updated Mar. 2, 2016).

living in the shadow of a mountain of coal ash,² to Beaumont, Texas, where an ever expanding refinery has encroached on a historic African American neighborhood,³ and Chaves County, New Mexico, where Latino New Mexicans worry about whether yet another hazardous waste site will pollute their environment.⁴ Communities of color and low-income communities across the nation also lack equal access to parks and resources for recreation and healthy, active living.⁵

We note, also, that many of the concerns outlined today echo expansive comments submitted over the past two decades in response to the publication of the Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39,650 (June 27, 2000) (“Draft Revised Guidance”); Draft Policy Papers Released for Public Comment: Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Thresholds, and Role of Complainants and Recipients in the Title VI Complaints and Resolution Process, 78 Fed. Reg. 24,739 (Apr. 26, 2013) (“Draft Policy Papers”); and, more recently, the

² See *In re Ala. Dep’t of Env’tl. Mgmt.*, EPA File No. 12R-13-R4 (EPA OCR 2013)(accepted for investigation on or about June 27, 2013); see Letter from Vicki Simons, Acting Dir., EPA OCR, to David Ludder (June 27, 2013).

³ See *In re Tx. Natural Res. Conservation Comm’n*, EPA File No. 01R-00-R6 (EPA OCR 2000)(accepted for investigation on or about June 2003); see Letter from Karen D. Higginbotham, Acting Dir., EPA OCR, to Rev. Roy Malveaux, Exec. Dir., People Against Contaminated Env’ts et al. (June 2003).

⁴ See *In re N.M. Env’t Dep’t*, EPA File No. 09R-02-R6 (EPA OCR 2002)(accepted for investigation on June 27, 2005); see Letter from Karen D. Higginbotham, Dir., EPA OCR, to Ron Curry, Sec’y, N.M. Env’t Dep’t (June 27, 2005).

⁵ See, e.g., Penny Gordon-Larsen et al., *Inequality in the Built Environment Underlies Key Health Disparities in Physical Activity and Obesity*, 117 *Pediatrics* 417 (2006); Lisa M. Powell et al., *Availability of Physical Activity–Related Facilities and Neighborhood Demographic and Socioeconomic Characteristics: A National Study*, 96 *Am. J. Pub. Health* 1676 (2006); Lisa M. Powell et al., *The Relationship Between Community Physical Activity Settings and Race, Ethnicity, and Socioeconomic Status*, 1 *Evidence-Based Preventive Med.* 135 (2004); Robert Garcia, *The George Butler Lecture: Social Justice and Leisure*, 46 *J. Leisure Res.* 7 (2013); Robert Garcia & Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, 2 *Stan. J. C.R. & C.L.* 143 (2005); Chona Sister et al., *Got Green? Addressing Environmental Justice in Park Provision*, 75 *GeoJournal* 229 (2010); Jennifer Wolch et al., *Parks and Park Funding in Los Angeles: An Equity-Mapping Analysis*, 26 *Urb. Geography* 4 (2005); Ming Wen et al., *Spatial Disparities in the Distribution of Parks and Green Spaces in the USA*, 45 *Supp. 1 Annals Behav. Med.* 18 (2013); Dustin T. Duncan et al., *The Geography of Recreational Open Space: Influence of Neighborhood Racial Composition and Neighborhood Poverty*, 90 *J. Urb. Health* 618 (2013). Notably, climate change and policies related to climate change also raise significant issues of civil rights compliance and enforcement. See, e.g., Env’tl. Justice Leadership Forum on Climate Change, *Environmental Justice State Guidance: How to Incorporate Equity & Justice into Your State Clean Power Planning Approach* (2016), available at <http://www.ejleadershipforum.org/wp-content/uploads/2016/01/EJ-State-Guidance-updated-March-7.pdf>.

draft “External Compliance and Complaints Program Strategic Plan: Fiscal Year 2015 -2020”⁶ (“Strategic Plan”); among other documents, and we refer OCR to the many comments from community-based stakeholders in the administrative record of those proceedings. Unfortunately, despite the passage of time and recent steps in the right direction, these comments remain relevant today.⁷

We submit these comments with the hope that EPA has the will to take the additional steps necessary to develop a true “Model Civil Rights Program,” which will require EPA to enact a number of critical reforms to finalize legal standards that are consistent with civil rights law; use its affirmative authority to ensure compliance and enforce Title VI and its regulations; bring greater transparency to its work; foster relationships with community stakeholders and adopt practices that are consistent with principles of environmental justice; coordinate Title VI compliance and enforcement with delegated programs, EPA’s regional programs, and other federal agencies; and secure remedial measures that achieve compliance.⁸ Based on our extensive review, we have concluded that the proposed rulemaking is a diversion from these needed reforms, particularly the resolution of legal standards, and will weaken OCR’s civil rights enforcement efforts. Instead, EPA should strengthen its program by clarifying that it will not apply a rebuttable presumption and by finalizing guidance with legal standards that are consistent with civil rights law.⁹

I. THE NOTICE OF PROPOSED RULEMAKING

⁶ U.S. EPA, Office of Civil Rights, External Compliance and Complaints Program Strategic Plan: Fiscal Year 2015-2020 (2015), *available at* https://www.epa.gov/sites/production/files/2015-10/documents/strategic_plan.pdf.

⁷ *See, e.g.*, Ctr. on Race, Poverty & the Env’t. & Cal. Rural Legal Assistance Found., Comments on Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits and Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Aug. 26, 2000), *available at* <https://www.hitpages.com/doc/4565208953520128/1> (“CRPE Comments”); Advocates for Env’tl Human Rights et al., Comments on EPA’s Draft Plan EJ 2014 Supplement (July 3, 2012), attached hereto as Ex. 1; Cal. Rural Legal Asst. Found. et al., Comments on EPA’s Draft Policy Papers (Mar. 22, 2013) (“Comments on Draft Policy Papers”), attached hereto as Ex. 2; Letter from Marianne Engelman Lado, Managing Atty., Earthjustice, to Gina McCarthy, Adm’r, EPA & Gwendolyn Keyes Fleming, Chief of Staff, EPA (Nov. 5, 2013), attached hereto as Ex. 3; Letter from Marianne Engelman Lado, Managing Atty., Earthjustice, to Gina McCarthy, Adm’r, EPA & Gwendolyn Keyes Fleming, Chief of Staff, EPA (Nov. 24, 2014), attached hereto as Ex. 4; Ashurst Bar/Smith Cmty. Org. et al., Comments on External Compliance and Complaints Program Strategic Plan: Fiscal Year 2015-2020 (Oct. 27, 2015), attached hereto as Ex. 5.

⁸ *See* Stakeholder Comments, *id.*

⁹ *See* Comments on Draft Policy Papers, Ex. 2; Draft Papers, 78 Fed. Reg. at 24,740.

A. EPA’s Proposal to Rescind Regulatory Deadlines is Arbitrary and Capricious and Serves No Legitimate Purpose.

We strongly oppose the proposal to remove deadlines from EPA’s Title VI regulations, because doing so would weaken accountability for investigating and processing Title VI complaints in a timely way. This action will not strengthen the overall process of considering and investigating Title VI complaints and post-award compliance reviews. Given EPA’s poor record of resolving Title VI complaints within the current enumerated time frames, replacing mandatory deadlines with greater discretion and a vague standard can only be interpreted as an effort to evade accountability rather than improve the timeliness of the agency’s responsiveness to complaints.

The existing regulations provide concrete deadlines for processing Title VI complaints and post-award compliance reviews.¹⁰ Within five days, EPA must acknowledge receipt of the complaint.¹¹ EPA then has twenty days to accept, reject, or refer a complaint to another agency,¹² and 180 days from the start of an investigation to issue preliminary findings, which must include notifying the recipient in writing of such findings, recommendations for achieving compliance, and the recipient’s right to engage in negotiations.¹³

EPA has taken a brash step by proposing to completely remove these regulatory deadlines and by inserting instead language requiring only that OCR make a “prompt investigation whenever a complaint indicates a possible failure to comply.”¹⁴ EPA claims that this revision will provide “flexibility and discretion” to OCR, a luxury that EPA should not be afforded given its poor record in timely processing Title VI complaints, discussed *infra*. Indeed, according to an independent evaluation prepared by Deloitte Consulting, “Evaluation of the EPA Office of Civil Rights” (“Deloitte Report”), delays at EPA were caused by EPA’s failure to develop meaningful compliance guidance, the challenge of mobilizing agency leadership to make final determinations, the need to build skills and competencies, and the diversion of

¹⁰ See 40 C.F.R. § 7.120 (2010).

¹¹ *Id.* § 7.120(c).

¹² *Id.* § 7.120(d)(1)(i).

¹³ *Id.* § 7.115(c) (2010).

¹⁴ Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency, 80 Fed. Reg. at 77,289.

resources from the Title VI program to the Title VII docket, among other things.¹⁵ Eliminating enforcement deadlines addresses none of these issues and fails to ensure that EPA creates the capacity to conduct timely investigations. To the contrary, regulatory deadlines at least offer much needed accountability by giving plaintiffs a solid basis on which to challenge OCR's unreasonable delays in court. By removing the deadlines, EPA is at best weakening the sole legal recourse that impacted communities have to hold the agency responsible for undertaking a timely, meaningful investigation.

1. EPA's history of delay causes real harm to communities seeking to vindicate their civil rights and work toward cleaner, healthier environments.

EPA has a demonstrated record of noncompliance with the regulatory deadlines, a record that has caused real harm to communities burdened by the effects of environmental harm and deprived of environmental benefits, including access to parks and recreation. These longstanding delays have gone on for decades. The 2003 U.S. Civil Rights Commission Report "Not in My Backyard" found that "[o]f 124 Title VI complaints filed with EPA by January 1, 2002, only 13 cases, or 10.5 percent, were processed by the agency in compliance with its own regulations."¹⁶ Despite the findings and recommendations of the Commission, the record of delay continued. According to the 2011 Deloitte Report, only six percent of the 247 Title VI complaints since 2001 were timely accepted or dismissed within the 20-day time frame, and 50% took over a year for acceptance.¹⁷ A recent investigation by Center for Public Integrity, which summed up two decades of EPA's delay, revealed the following:

[A review of] 265 complaints filed from 1996 to 2013 shows that the EPA has failed to adhere to its own timelines: On average, the office took 350 days to decide whether to accept a complaint and allowed cases to stretch 624 days from start to finish.¹⁸

¹⁵ Deloitte Consulting LLP, Evaluation of the EPA Office of Civil Rights: Final Report at 25–27 (2011), available at <https://assets.documentcloud.org/documents/723416/epa-ocr-audit.pdf>.

¹⁶ U.S. Comm'n on Civil Rights, Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice 57 (2003), available at <http://www.usccr.gov/pubs/envjust/ej0104.pdf>.

¹⁷ *Id.* at 19, 25 ("Only 6%, or 15 out of 247 [complaints], were moved to either accepted or rejected within 1-month period, in alignment to the EPA targeted 20-day time frame for acknowledgement. In fact, half of the complaints have taken one year or more to move to accepted or dismissed status.").

¹⁸ Talia Buford, *Thirteen Years and Counting: Anatomy of an EPA Civil Rights Investigation*, Ctr. for Pub. Integrity, Aug. 7, 2015, <http://goo.gl/qGpYBS>.

Indeed, many signatories have experienced the effects of EPA's jurisdictional review process firsthand, frequently waiting more than a year only to have their complaint dismissed on a jurisdictional basis, such as timeliness.¹⁹ This record is simply unacceptable and causes real harm to communities that rely on this enforcement mechanism to vindicate their basic civil rights.

There are several notable instances where EPA's delay has been particularly egregious. In *Padres*, plaintiff groups filed a complaint with EPA's OCR in 1994, alleging that the operation of toxic waste dumps by ten California agencies discriminated on the basis of national origin against Latinos.²⁰ In total, EPA took 17 years to resolve this case, despite repeated efforts by plaintiff groups to reach out to EPA.²¹ The end result, a dismissal of the complaint, came in 2012, after plaintiffs filed a lawsuit against EPA in 2011.²² In the words of Senior District Judge Anthony W. Ishii, of the United States District Court for the Eastern District of California, "...17 years to resolve a Title VI complaint is simply deplorable."²³ Judge Ishii noted that between 2006 and 2007, EPA did not process a single Title VI complaint.²⁴

In *Angelita C.* – the one and only case in which EPA has made a preliminary finding of discrimination – nearly twelve years passed before EPA made the preliminary finding.²⁵ While the complaint languished, Latino schoolchildren were exposed on a daily basis to toxic pesticides

¹⁹ See, e.g., *In re Port Auth. of N.Y. & N.J.*, EPA File No. 01R-14-R2 (EPA OCR 2014) (In 2015, OCR withheld a jurisdictional determination on a Title VI complaint filed by the North Shore Waterfront Conservancy of Staten Island against the Port Authority of New York and New Jersey for more than a year while the construction-adjacent community was exposed to inadequately monitored and likely contaminated dust and debris. After a year, EPA concluded that the complaint was "untimely.").

²⁰ *Padres Hacia Una Vida Mejor v. Jackson*, 922 F. Supp. 2d 1057, 1060 (E.D. Cal. 2013).

²¹ *Id.* at 1060.

²² *Id.* The timing of the dismissal, so soon after the complainants filed litigation, suggests that the lawsuit successfully created pressure on OCR to complete its investigation. It also raises the concern that OCR may have closed the complaint in order to avoid an adverse ruling in court by rendering plaintiffs' claim that OCR unreasonably delayed in resolving the complaint moot. As the Center for Public Integrity's report stated: "[A]s the [EPA's] records reveal, the agency often found allegations 'moot' precisely because of its own inaction...." Kristen Lombardi et al., *Environmental Racism Persists, and the EPA is One Reason Why*, Ctr. for Pub. Integrity, Aug. 3, 2015, updated Sept. 1, 2015, <http://www.publicintegrity.org/2015/08/03/17668/environmental-racism-persists-and-epa-one-reason-why>.

²³ *Id.* at 1071 n.9.

²⁴ *Id.*

²⁵ See *Garcia v. McCarthy*, No. 13-cv-03939-WHO, 2014 WL 187386 at *2 (N.D. Cal. Jan. 16, 2014), appeal docketed No. 14-15494 (9th Cir. Mar. 17, 2014) (discussing the *Angelita C.* case).

and fumigants.²⁶ By the time EPA made its preliminary finding, EPA's delay meant that multiple generations of schoolchildren endured exposure to pesticides.²⁷

Examples of the agency's inaction continue. In 2015, after waiting more than a decade for EPA action, five complainant groups filed litigation against EPA for unreasonably delaying Title VI investigations of their complaints and by failing to issue preliminary findings.²⁸ At the time they filed suit, the agency's inaction spanned *ten to twenty years* in each of the cases.²⁹ These complaints include:

- A 1992 complaint alleging that the permitting process of the Genesee Power Station in Flint, Michigan failed to consider the impacts of the facility on a predominantly African American community. Of particular concern was the fact that the facility incinerated materials that release toxic chemicals into the air of this community.
- A second complaint, filed in 2000, concerned the decision to permit two power plants in the already burdened community of Pittsburg, California, where a majority of the non-white residents suffered higher mortality rates, as well as breast cancer and asthma.
- A third complaint, also filed in 2000, alleged that a permit amendment was issued to ExxonMobil without public participation in a contested case hearing, allowing the company to increase its emissions in the community of Beaumont, Texas, which is 95% African American.
- A fourth complaint, filed in 2002, challenged the permitting process of a hazardous waste treatment, storage and disposal facility in Chaves County, New Mexico. The complaint alleged that the New Mexico Environmental Department failed to examine the impact of the facility on the predominantly Spanish-speaking residents of this community, in addition to exhibiting hostility toward the community by failing to include them in the permitting process.

²⁶ *Id.* at *1.

²⁷ Ultimately, complainants sued EPA over the agency's handling of the complaint behind plaintiffs' backs. *Id.* at *4 ("Plaintiff Maria Garcia is the mother of plaintiffs David Garcia and Angelica Guzman. David Garcia was 14 years old when Angelita C. was filed and a student at Rio Mesa High School in Oxnard, California. David Garcia now has two children, one- and three-years old, that live in Oxnard in the Rio School District and Oxnard Union School District and will attend Rio Lindo Elementary School, Rio del Valle Middle School, and Rio Mesa High School.").

²⁸ See generally First Amended Complaint for Declaratory and Injunctive Relief, CALifornians for Renewable Energy v. U.S. Env'tl. Prot. Agency, No. 4:15-cv-03292-SBA (N.D. Cal. Jan. 7, 2016).

²⁹ *Id.*

- Yet another complaint was filed by the Ashurst Bar/Smith Community Organization in 2003, concerning the permitting process for the Stone's Throw Landfill in Tallassee, Tallapoosa County, Alabama, which failed to analyze the discriminatory impact of siting the Landfill in a historic African American community : as a result, the community has endured the impacts of waste received by the Landfill from across Alabama and certain counties in Georgia.

In each of these cases, EPA did not even come close to adhering to the 180-day time frame for making preliminary findings , and let complaints languish. In the meantime , each of these communities has been forced to bear the impacts of the power plants, landfills, or refineries that so affect their lives.

2. Regulatory deadlines provide accountability and are a mechanism for complainants to demand relief when EPA fails to act.

Communities suffering from environmental racism³⁰ rely on the regulatory deadlines to hold OCR accountable. The U.S. Supreme Court has recognized that “when an agency is compelled by law to act within a certain time period...a court can compel the agency to act”³¹ Under the Administrative Procedure Act (“APA”), complainants can bring actions to “compel agency action unlawfully withheld or unreasonably delayed .”³² However, stripping the

³⁰ In *Dumping in Dixie: Race, Class, and Environmental Quality*, Robert D. Bullard states:

Environmental racism refers to any policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color. Environmental racism combines with public policies and industry practices to provide *benefits* for whites while shifting industry *costs* to people of color. It is reinforced by governmental, legal, economic, political, and military institutions.

Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* 98 (1st ed. 1990) (emphasis in original) (citations omitted); *see also* Energy Justice Network, Environmental Justice/Environmental Racism, Definitions, <http://www.ejnet.org/ej/> (last visited Mar. 9, 2016) (“Environmental racism is the disproportionate impact of environmental hazards on people of color.”).

³¹ *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 65 (2004).

³² 5 U.S.C. § 706(1); *see, e.g., Rosemere Neighborhood Ass’n. v. U.S. EPA*, 581 F.3d 1169 (9th Cir. 2009) (unreasonable delay litigation).

regulations of the deadlines creates an unnecessary hurdle to justice, as the agency will have less accountability and greater discretion.³³

EPA counters this assertion by contending that the proposed “promptly” standard, which will replace the deadlines, remains “subject to judicial review.”³⁴ EPA’s assertion is misleading, however, given that the removal of clear deadlines will make it exceptionally difficult for complainants to prevail in court, even where their Title VI complaints remain unresolved for a lengthy period of time. Without the regulatory time frames, courts afford agencies greater discretion in determining what constitutes an unreasonable delay.³⁵ “[W]hen there is no hard deadline imposed on the agency, courts are often reluctant to compel an agency to act and often allow an agency to set its own priorities.”³⁶ Unreasonable delay claims in the absence of deadlines are more unpredictable.³⁷

Notably, EPA has been subject to few judicial challenges under the current deadlines. Few complainants have exercised the right to take EPA to court for unreasonable delay under the APA, and EPA has only been sued when complaints have languished for years on end, not one day, one week, or even one month beyond the deadlines. There are no instances of plaintiffs filing an action on the 181st day. EPA characterizes the deadlines as “self-imposed” and “inflexible.”³⁸ However, neither EPA’s regulations, nor complainants, nor recipients have bound the agency in a rigid or inflexible way to these deadlines.

3. The proposal to remove regulatory deadlines has no rational basis and suggests that EPA is trying to evade its obligations to enforce civil rights.

³³ 80 Fed. Reg. at 77,285 (The EPA asserts that the proposed rule will give them “flexibility and discretion.”).

³⁴ *Id.*

³⁵ *See Forest Guardians v. Babbitt*, 174 F.3d 1178, 1190 (10th Cir. 1999) (“In our opinion, when an agency is required to act—either by organic statute or by the APA—within an expeditious, prompt, or reasonable time, § 706 leaves in the courts *the discretion to decide whether agency delay is unreasonable*. However, when Congress by organic statute sets a specific deadline for agency action, neither the agency nor any court has discretion. The agency must act by the deadline. If it withholds such timely action, a reviewing court must compel the action unlawfully withheld.”) (emphasis added).

³⁶ Daniel T. Shedd, Cong. Research Serv., R43013, *Administrative Agencies and Claims of Unreasonable Delay: Analysis of Court Treatment I* (2013), available at <https://www.fas.org/sgp/crs/misc/R43013.pdf>.

³⁷ *Id.* at 4 (citing *In re Barr Laboratories, Inc.*, 930 F.2d 72, 76 (D.C. Cir. 1991)) (“There is no per se rule as to how long is too long to wait for agency action.”)

³⁸ 80 Fed. Reg. at 77,287.

The proposal to remove regulatory deadlines has no rational basis. Instead of attempting to further loosen its regulatory requirements, EPA should devote its needed resources to reforming its Title VI program to bring practices into line with civil rights law and programs administered by other agencies that conduct investigations in a timely manner. We are concerned that EPA is trying to evade its duty to timely and effectively investigate Title VI complaints. While the *Padres* case was in litigation during 2011, it came to light that EPA was contemplating elimination of the regulatory deadlines.³⁹ During the pendency of the suit, EPA's then-Region 9 OCR director sent an email to Region 9 employees informing them that Rafael DeLeon, then OCR's director, had received a green light to change the regulations in relation to the 180-day time period.⁴⁰ This email was transmitted on July 27, approximately four weeks after the *Padres* plaintiffs filed an unreasonable delay claim under the APA challenging EPA's past and continuing violation of the regulatory deadlines, seeking declaratory and injunctive relief.⁴¹ Such actions suggest that EPA's decision to remove deadlines was not, as it has stated, to "strategically manage its administrative complaint docket,"⁴² but rather, to avoid accountability for its delays.

Furthermore, as discussed *infra*, the deadlines are not unique to EPA. The Department of Energy also has regulatory deadlines, for example.⁴³ In particular, Department of Energy regulations require the Director to complete a jurisdictional determination and, if appropriate, initiate an investigation within 35 days of receipt of a complaint.⁴⁴ Department of Energy regulations further direct the agency to advise the recipient in writing of preliminary findings and, where appropriate, recommendations for achieving voluntary compliance within 90 days of

³⁹ See E-mail from Joann Asami, U.S. EPA Region 9, to Patrick Chang, U.S. EPA (July 26, 2011, 09:08am), attached hereto as Ex. 6.

⁴⁰ *Id.*

⁴¹ *Padres*, 922 F. Supp. 2d at 1060.

⁴² 80 Fed. Reg. at 77,285.

⁴³ See 10 C.F.R. § 1040.104 (2003) (35-day time frame for the Department of Energy to determine jurisdiction and initiate investigation; 90-day time frame from initiation of investigation to make preliminary finding and recommendations for achieving voluntary compliance); see also 24 C.F.R. §§ 8.56(d), 8.56(e)(1)(i), 8.56(g), 8.56(h)(3) (HUD regulation establishing 10-day time frame to notify the complainant and recipient of the agency's receipt of a complaint; 20-day time frame to determine jurisdiction; 180-day time frame from receipt of complaint to notify recipient and complainant (if any) of the results of the investigation; and a subsequent 60-day timeframe for the reviewing civil rights official to sustain or modify the letter of finding).

⁴⁴ 10 C.F.R. § 1040.104(c)(1).

initiating the investigation.⁴⁵ Similarly, the Tennessee Valley Authority (“TVA”) has a ten-day regulatory time frame from the receipt of the complaint to determine whether the agency has jurisdiction and to initiate an investigation.⁴⁶ TVA shares with EPA the 180-day deadline from the initiation of the investigation to make preliminary findings.⁴⁷ Other agencies such as the Department of Transportation (“DOT”) and the Department of Justice (“DOJ”) have policies and procedures with similar deadlines with respect to handling complaints filed pursuant to Title VI,⁴⁸ further reinforcing the reasonableness of the regulatory time frames. Moreover, the 180-day deadline for investigations is not exclusive to implementing regulations under Title VI, but also guides analogous statutory schemes.⁴⁹

According to EPA, a key reason for removing the deadlines is based on the inherent “complexity” of the complaints filed, however no rigorous analysis is required to provide notice of the receipt of a complaint, which is an administrative task.⁵⁰ With the prominence of email communication in the present day, EPA should be able to meet this deadline simply by sending the complainant and recipient an email or form letter by U.S. mail. Moreover, twenty days is ample time to make a determination about jurisdiction, and, as such, should not be removed. Finally, the 180-day deadline from the start of a complaint investigation or compliance review is

⁴⁵ *Id.* § 1040.104(c)(3).

⁴⁶ 18 C.F.R. § 1302.7(c) (2003) (10-day time frame for TVA to determine jurisdiction and initiate investigation; 180-day time frame from initiation of investigation to make preliminary findings).

⁴⁷ *Id.*

⁴⁸ See U.S. Dep’t of Transp., DOT 1000.18, External Civil Rights Complaint Processing Manual 11 (2007), available at <https://www.civilrights.dot.gov/sites/default/files/civil-rights-laws/policies/externalcomplaintmanual-final.pdf> (acknowledgement of complaint within 10 days of receipt; 10-day time frame for jurisdictional review; 180-day time frame for resolving all complaints, not only completing an investigation, unless there are extenuating circumstances); U.S. Dep’t of Justice, Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes (1998), available at <https://www.justice.gov/crt/investigation-procedures-manual-civil-rights-division#ack> (15-day suggested time frame for acknowledgement of the complaint). Although timelines for investigations at DOT and DOJ appear in each agency’s complaint processing manual rather than in regulatory text, neither agency shares EPA’s record of inaction requiring similar mechanisms for accountability. The time frames established by DOT and DOJ operating procedures, however, are comparable or even stricter than EPA’s.

⁴⁹ See, e.g., 28 U.S.C. § 2675(a) (under the Federal Tort Claims Act, plaintiffs may file suit at any time after the six months; the six months being the time frame by which federal agencies are charged with making a final disposition of a filed claim).

⁵⁰ See 40 C.F.R. § 7.120(c).

for *preliminary* findings, not the final disposition of the case.⁵¹ Current time frames are both in line with the regulations, policies and guidance documents at other agencies and feasible.

Time and again, EPA's sister agencies demonstrate that investigations can be completed in a timely way. Most recently, for example, on December 15, 2015, DOT entered into a Voluntary Resolution Agreement with the Texas Department of Transportation, resolving a complaint filed earlier in the same year, on March 13, 2015.⁵² EPA's argument that it needs more time to resolve complaints because its cases are somehow more complex than those at other agencies only serves to underscore EPA's failure. Rather than extending time frames for investigation, EPA must clarify its legal standards and revoke the rebuttable presumption that compliance with environmental standards is a defense to a Title VI claim.⁵³ The presumption has increased EPA's investigatory burden above and beyond the requirements of civil rights law.

Signatories strongly oppose EPA's proposal to remove the regulatory deadlines, which would weaken EPA's Title VI compliance and enforcement program. In the current state of affairs, EPA must take effective action to enforce civil rights, not undermine one of the few mechanisms for accountability.

B. In the Post-*Sandoval* Era, Enforcement by EPA is Often the Only Legal Mechanism to Address Violations of Agency Regulations and Should Not be Foreclosed by Greater Agency Discretion in Case Selection.

EPA proposes to establish that it has discretion to decide which Title VI administrative complaints to accept for investigation by amending 40 C.F.R. § 7.120, which currently requires that EPA promptly investigate "all complaints." EPA proposes to remove this language and substitute text requiring investigation of complaints that "indicate a possible failure to comply."⁵⁴ In its Notice of Proposed Rulemaking, EPA claims that this change "clarifies the agency's discretion to pursue a path to resolution in light of the particular facts of each case," noting

⁵¹ *Id.* § 7.115(c).

⁵² See Voluntary Resolution Agreement between Fed. Highway Admin. & Tx. Dep't of Transp. (Dec. 17, 2015), available at <https://ccharborbridgeproject.files.wordpress.com/2012/02/voluntary-resolution-agreement-signed.pdf>.

⁵³ See 78 Fed. Reg. at 24,739 (Draft Policy Paper proposing to revoke the rebuttable presumption that compliance with environmental standards is a defense to a disparate impact claim); Comments on Draft Policy Papers, Ex. 2.

⁵⁴ 40 C.F.R. § 7.120 (currently requiring that OCR "promptly investigate all complaints ...unless the complainant and the party complained against agree to a delay pending settlement negotiations"); 80 Fed. Reg. at 77,287.

especially that “ [n]ot every complaint...will require the completion of a costly and time consuming investigation”⁵⁵ As with many of EPA’s proposed provisions, this change in language creates new hurdles for communities of color experiencing discrimination rather than dismantling the historic barriers that have long been the focus of the signatories’ Title VI advocacy with EPA.⁵⁶ Moreover, the proposal is unnecessary if it is intended, as EPA purports, to clarify that EPA has flexibility in case handling rather than to afford EPA more discretion to reject complaints.⁵⁷ We strongly oppose this proposal for the reasons laid out below.

OCR already has a number of processes “to prioritize and dedicate resources” to those complaints most likely to reveal a Title VI violation – starting with a strictly enforced jurisdictional review that requires complaints to (1) be in writing; (2) describe the alleged discriminatory act that violates EPA’s Title VI regulations; (3) identify the EPA funding recipient that performed the discriminatory act; and (4) be filed within 180 days of that discrimination.⁵⁸ As highlighted by the Center for Public Integrity’s analysis of EPA’s Title VI enforcement record, of the 264 complaints filed between 1996 and 2013, EPA’s jurisdictional review is anything but *pro forma*: more than 60 percent of complaints were rejected on jurisdictional grounds.⁵⁹

We support EPA’s interest in investigating complaints that indicate a Title VI violation; however, rewriting the regulations to establish discretion over which complaints to investigate does nothing to strengthen OCR’s authority to act pursuant to the mandates of Title VI. In fact, it will weaken the position of environmental justice communities by requiring complainants to try to navigate an additional, unclear standard governing OCR’s acceptance of complaints.⁶⁰

⁵⁵ 80 Fed. Reg. at 77,287.

⁵⁶ See Exs. 1–5 (comments filed previously by many of the signatories to this letter).

⁵⁷ Remarks of Lilian Dorka, Deputy Dir., OCR, Public Meeting (Mar. 1, 2016) (stating that the proposal is not an effort to reject complaints but to provide more flexibility in case handling).

⁵⁸ 40 C.F.R. § 7.120(b); 65 Fed. Reg. at 39,672.

⁵⁹ Yue Qiu & Talia Buford, *Decades of Inaction*, Ctr. for Pub. Integrity, Aug. 3, 2015, <http://www.publicintegrity.org/2015/08/03/17726/decades-inaction>.

⁶⁰ Notably EPA’s jurisdictional review includes an analysis of whether the complaint asserts an allegation that would constitute a violation of the regulations, *see* 40 C.F.R. § 7.120(b)(1), a burden made all the more difficult for complainants and OCR reviewers because of the lack of clarity regarding EPA’s legal standards. Signatories have repeatedly requested that EPA develop a clear and uniform set of legal standards to guide its Title VI practices rather than relying on the decade-old Draft Revised Guidance, which raises a host of procedural and substantive questions about OCR’s legal standards. *See, e.g.*, Ashurst Bar/Smith Cmty. Org. Comments, Ex. 5.

Making this change leaves both environmental justice communities and federal funding recipients with no clarity or criteria to predict which complaints EPA might accept.

Signatories agree that the path to resolution of any given complaint must be tailored to the specific facts of each case and that “such a path may not be identical for every complaint.”⁶¹ Yet, OCR’s investigative authority has always been flexible and complaint-specific. EPA’s current Title VI regulations require OCR to “attempt to resolve complaints informally whenever possible.”⁶² EPA’s 2000 Draft Revised Guidance and, more recently, its Interim Case Resolution Manual (“CRM”), discussed *infra*, include complaint resolution processes that create opportunities for EPA and recipients to reach voluntary compliance agreements and, also, for complainants and recipients to resolve complaint allegations informally.⁶³ EPA expressly describes alternative dispute resolution (“ADR”) as a preferred tool for achieving voluntary compliance, noting that “OCR expects to use ADR techniques to informally resolve” complaints, which “includes a variety of approaches” encompassing third party neutrals and creative problem solving.⁶⁴

Indeed, the rationale underscoring this proposed regulatory amendment – that EPA does not currently benefit from flexibility – is belied by its arguments in *Garcia v. McCarthy*, 3:13-cv-03930-WHO, 2014 WL 187386 (N.D. Cal. Nov. 20, 2013), referenced *supra* nn. 25–27. In *Garcia*, EPA asserted that “agencies [such as itself] *have discretion* to determine how best to enforce the law, subject to regulatory, statutory, and constitutional constraints”⁶⁵ More specifically, EPA argued that its “decision to settle an administrative complaint and, thereby, obviate the need for (further) enforcement action is committed to agency discretion,” which it exercised to resolve the Title VI complaint.⁶⁶

⁶¹ 80 Fed. Reg. at 77,287.

⁶² 40 C.F.R. § 7.120(d)(2)(i).

⁶³ 65 Fed. Reg. at 39,673; EPA OCR, Interim Case Resolution Manual 17–24 (2015), available at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf.

⁶⁴ 65 Fed. Reg. at 39,673; see also CRM at 20–24.

⁶⁵ Notice of Motion and Motion to Dismiss Amended Complaint at 1, *Garcia v. McCarthy* (Nov. 20, 2013), ECF No. 20 (emphasis added).

⁶⁶ *Id.* at 4; see also *id.* at 5–6 (EPA arguing that its discretionary action to settle a Title VI complaint is subject to limited judicial review to ascertain whether it is within the bounds of the law); *id.* at 6 (likening EPA’s discretion to settle Title VI complaints with its discretionary authority to decide not to initiate an enforcement action); *id.* at 7 (asserting that EPA has “the discretion to determine the scope of its investigation” and “how to focus its investigations”); *id.* at 8–9 (EPA, in defending the settlement agreement at issue as a good deal, reasoning that “the EPA’s decision regarding what consideration to accept in exchange for promising not to take additional enforcement steps is precisely the kind of

EPA's existing "discretion to pursue a path to resolution" is further evidenced by the fact that EPA has never made a formal finding that a recipient has violated Title VI and its regulations in more than twenty years of processing complaints of discrimination in the environmental context.⁶⁷ The Center for Public Integrity report also reaches this conclusion, noting that "[e]ven among the small universe of cases" accepted for investigation -- approximately 25 percent of all complaints filed -- an additional 80 percent are eventually dismissed without any resolution or relief for the complainants.⁶⁸ "[T]he civil -rights office rarely closes investigations with formal sanctions or remedies" despite having the authority to correct discriminatory actions by withholding funding or overturning decisions.⁶⁹ Rather than pursuing a full investigation and making formal findings, EPA almost exclusively relies on the other tools it has available: voluntary agreements between EPA and the party committing discrimination, occasionally making use of ADR, which brings together recipients and complainants for direct negotiations.⁷⁰

EPA's processing of all complaints for investigation is of heightened importance since the U.S. Supreme Court ruled in *Alexander v. Sandoval* that private parties have no private right of action to enforce disparate impact regulations enacted pursuant to Title VI.⁷¹ Since only acts of intentional discrimination under Title VI can open the door to the federal courthouse for private individuals and organizations, it is of paramount importance that EPA reviews complaints from communities of color that suffer disparate exposures to environmental burdens

discretionary agency choice that [case law] protects"); *see also* Reply Brief in Support of Motion to Dismiss Amended Complaint at 1–6, *Garcia v. McCarthy* (Dec. 20, 2013), ECF No. 25 at 1-6 (EPA refuting plaintiffs' contention that Title VI and EPA's regulations "constrain the exercise of [its] enforcement discretion"). Indeed, the outer confines of this discretion and whether voluntary resolution agreements entered into by EPA must bring the recipient into compliance with Title VI and its regulations are key issues in *Garcia*. *Garcia*, 2014 WL 187386 at *9–10 (discussing plaintiffs' argument that settlement wrongfully failed to require recipients to remedy disparate adverse impacts). Given that these issues are currently pending in the 9th Circuit Court of Appeals, *Garcia v. McCarthy*, No. 14-15494, EPA's proposal to grant itself more discretion creates the impression that its proposal is an attempt to avoid future legal challenges by complainants to EPA's case handling.

⁶⁷ *See* Lombardi et al., *supra* note 22 (reviewing the 265 complaints filed between 1996 and 2013).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* ("Only nine cases have been settled through agreements brokered between agency officials and targets of complaints. Another three cases have been closed through "alternative dispute resolutions," meaning the complainants and the targets hashed out solutions."); *see also*, U.S. EPA, Title VI - Settlements and Decisions <http://www.epa.gov/ocr/title-vi-settlements-and-decisions##settlement> (last updated Oct. 4, 2015)

⁷¹ *Alexander v. Sandoval*, 532 U.S. at 275.

and deprivation of environmental benefit in the places where they live, work, and play. Such communities often have no other recourse for preserving or enforcing their civil rights when EPA declines to investigate a case under a discriminatory impact standard.

The importance of a well-functioning process for addressing disparate impact claims is exemplified by *South Camden Citizens in Action v. New Jersey Department of Environmental Protection*. After residents challenged the state's decision to permit a cement processing facility in an environmental justice community already overburdened by Superfund sites, sewage treatment and power plants, and historical contamination, among other things, the District Court twice found that community plaintiffs were entitled to relief for their disparate impact claims.⁷² However, in both cases, the realization of relief was denied as a result of the Supreme Court's holding in *Sandoval* that Title VI affords no private right of action to enforce regulatory standards prohibiting actions with an unjustified disparate impact.⁷³ Despite the court's finding that the recipient violated the law in that case, plaintiffs had no recourse other than an administrative complaint to EPA, a path that may prove even more futile if EPA has even greater discretion to reject complaints.

The proposal to increase EPA's discretion over selecting which complaints to investigate will ultimately make EPA's Title VI enforcement process even less transparent and will require environmental justice advocates and impacted communities experiencing discrimination and recipients to predict which cases EPA will accept, a task made more complex since the process can span multiple different administrations. Even if the goal of this administration is to accept every case that meets jurisdictional standards with transparency and consistency, EPA's proposed amendment would eliminate any accountability that might keep future administrations from summarily rejecting those same complaints. EPA should focus on building a strong Title VI enforcement program no matter who is in office, and these proposed regulations fall short.

C. The EPA's Record of Delay in Resolving Discrimination Claims Is an Outlier as Compared to Other Agencies: This Necessitates More, Not Less, Accountability in Resolving Discrimination Claims.

⁷² See *S. Camden Citizens in Action v. N.J. Dep't of Env'tl. Prot.*, 145 F. Supp. 2d 446 (D.N.J. 2001) (original holding pre-*Sandoval*), modified post-*Sandoval* on other grounds, 145 F. Supp. 2d 505 (D.N.J. 2001), on remand 254 F. Supp. 2d 486 (D.N.J. 2003).

⁷³ *S. Camden Citizens in Action v. N.J. Dep't of Env'tl. Prot.*, 274 F.3d 771, 790–91 (3d Cir. 2001).

As discussed above, the EPA's uniquely poor performance in fulfilling its statutory responsibility to enforce anti-discrimination laws is well known and well-documented.⁷⁴ Among the nearly 300 complaints filed with EPA's OCR between 1996 and 2013, 162 were rejected without investigation; 38 received no review; 64 were accepted for investigation; only 12 cases were closed with official action, including negotiated settlements; and at least 17 remain pending.⁷⁵ That record is unlike other federal agencies that are also charged with enforcing Title VI. For example, in the 2013–2014 fiscal years, the U.S. Department of Education's ("Education") OCR received 4,600 Title VI-related complaints, affirmatively brought 32 Title VI investigations, and provided technical assistance for 216 events on Title VI related issues.⁷⁶ In those same fiscal years, Education's OCR resolved 67 Title VI complaints involving equal educational opportunities.⁷⁷ A report published by the U.S. Commission on Civil Rights found that between 1994 and 2003, the U.S. Department of Housing and Urban Development ("HUD") received 2,262 Title VI complaints and, in this same period, conducted 530 Title VI compliance reviews.⁷⁸

Moreover, despite EPA's existing regulatory deadlines for investigating Title VI complaints, including 180 days to complete its investigation, OCR rarely has met this goal. Over a 17-year period from 1996 to 2013, EPA took more than 365 days (i.e., a year), on average, to resolve cases and, in fact, took up to two years to resolve 169 cases; two to five years to resolve

⁷⁴ See, e.g., Qiu & Buford, *supra* note 59 (cataloguing disposition of complaints over 17 year period); Deloitte Report, *supra* note 15 (describing OCR's "record of poor performance"); see also U.S. Comm'n on Civil Rights, *supra* note 16, at 31–32 (reporting that "[b]etween September 1993 and July 1998, EPA did not uphold a single Title VI complaint," and that "[d]uring this period, 58 Title VI complaints were filed with the agency, including 50 challenging state or local permitting decisions," and that "[a]s of July 1998, 31 of these complaints had been rejected, 15 were accepted for investigation, and 12 were still pending acceptance"); see also *id.* at 56 (reporting that as of February 8, 2002, the EPA's backlog had been reduced from 66 to 41 complaints, and that of these, 34 were then identified as being acceptable for investigation); *id.* at 58 (reporting that as of June 20, 2003, the EPA received 136 complaints, 75 of which were rejected).

⁷⁵ Qiu & Buford, *supra* note 59.

⁷⁶ U.S. Dep't of Educ., OCR, Protecting Civil Rights, Advancing Equity: Report to the President and Secretary of Education 18 (2014), available at <http://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2013-14.pdf>.

⁷⁷ *Id.* at 19. Education's OCR defines resolved cases as those that resulted in dismissal, administrative closure, a finding of no violation, an early complaint resolution, or a resolution agreement. *Id.* at 45 n.1.

⁷⁸ See U.S. Comm'n on Civil Rights, Funding Federal Civil Rights Enforcement: 2005 42 tbls. 6.4 & 6.5 (2004) available at <http://www.usccr.gov/pubs/crfund05/crfund05.pdf>.

63 cases; and more than five years to resolve 25 cases.⁷⁹ In that regard, EPA is unlike other federal agencies, which have a significantly better record of investigating and even resolving complaints within 180 days of their receipt. For example, in fiscal year 2012, Education's OCR resolved 93% of its 7,491 complaints within 180 days.⁸⁰ In the three preceding fiscal years, 2009-2011, the percentage of complaints resolved within 180 days of receipt ranged from 90 - 92%.⁸¹ The 2005 report by the Commission on Civil Rights found the average age of open cases at HUD in fiscal year 2003 was 143 days.⁸²

Compared to its sister agencies, not only has EPA's complaint processing been significantly less timely, but EPA has shown a remarkable lack of will to enforce the law: "In its 22-year history of processing environmental discrimination complaints, *the office has never once made a formal finding of a Title VI violation*."⁸³ By contrast, for example, the Federal Highway Administration ("FHWA") received an administrative complaint filed on behalf of Leaders for Equality and Action in Dayton on August 10, 2011, and *issued its finding less than two years later* that "African Americans have faced discriminatory impact" as a result of the City of Beavercreek's decision to deny the Regional Transit Authority's application to install bus stops near a mall in the City.⁸⁴ FHWA was able to complete its investigation in a timely way despite the fact that complainants raised multiple allegations, including disparate impact claims.⁸⁵ Most significantly, FHWA reached its conclusion that the City's action had an "impact" without an

⁷⁹ Qiu & Buford, *supra* note 59; see U.S. Comm'n on Civil Rights, *supra* note 16, at 57 ("Of 124 Title VI complaints filed with EPA by January 1, 2002, only 13 cases, or 10.5 percent, were processed by the agency in compliance with its own regulation. None of the 13 complaints processed within the 20 -day window were accepted for investigation. All were rejected because EPA assessed that they did not meet the agency's regulatory requirements.")

⁸⁰ U.S. Dep't of Educ., OCR, Helping to Ensure Equal Access to Education: Report to the President and Secretary of Education at 21 ex.10 (2012), *available at* <http://www2.ed.gov/about/reports/annual/ocr/report-to-president-2009-12.pdf>.

⁸¹ *Id.* at 21 ex.10. Over the course of four fiscal years, 2009-2012, OCR received over 7,700 Title -VI related complaints, and affirmatively brought 61 Title VI-related investigations. *Id.* at 26.

⁸² U.S. Comm'n on Civil Rights, Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations?, in *An Evaluation of the Departments of Education, Health and Human Services, and Housing and Urban Development, and the Equal Employment Opportunity Commissions 149* (2004) *available at* <http://www.usccr.gov/pubs/10yr04/10yr04.pdf>.

⁸³ Lombardi et al., *supra* note 22 (emphasis added).

⁸⁴ Letter from Warren S. Whitlock, Assoc. Adm'r for Civil Rights, FHWA, to Michael Cornell, City Manager, City of Beavercreek, Ohio et al. at 15 (June 26, 2013), *available at* http://www.justice.gov/sites/default/files/crt/legacy/2014/07/07/DOT_fhwa_decision-lead_v_city_of_beavercreek_june_2013.pdf. Notably, FHWA *issued a finding* within two years; the investigation was conducted in less time.

⁸⁵ *Id.* at 4.

overly burdensome analysis of the impacts – FHWA neither evaluated, for example, how many people might be injured or killed as a result of walking down the highway to reach the mall in the absence of bus stops, nor the precise economic loss individuals might sustain if they were denied the additional access to the mall afforded by bus stops. The letter of findings issued by FHWA reviews the racial composition of the impacted population and then concludes that, based on the statistics, “it is clear that African Americans disproportionately rely on RTA transit service compared with whites. As a result, African Americans are disproportionately affected. . . .”⁸⁶

Similarly, the U.S. Department of Labor (“DOL”) received an administrative complaint filed on behalf of the Miami Workers Center on or around November 21, 2011, and issued its initial determination *less than 18 months later* finding that the State’s electronic filing system for unemployment insurance benefits had a discriminatory effect on limited English proficient (“LEP”) persons and persons with disabilities.⁸⁷ Based on these violations, the DOL concluded that the State must take certain corrective actions *or face sanctions*, including termination of DOL funding.⁸⁸

This record of relative timeliness in making Title VI findings and/or reaching voluntary compliance exists across various other federal agencies. Indeed, certain agencies have made findings of discrimination well within 180 days of the receipt of a complaint (*i.e.*, within a week to six months) or not long after 180 days (*i.e.*, between seven to ten months). Even in those cases where agencies have made findings of discrimination after a longer period of time – for example, up to five years – that time period includes not only the investigation but also administrative activities leading to resolution, and often involve more complex “pattern and practice” claims. The following, thus, illustrate the potential for EPA to complete preliminary investigations, make recommendations, and even resolve cases with far greater expediency.

- **DOJ.** *See, e.g.*, U.S. DOJ, Civil Rights Division, Investigation of the New Orleans Police Department (“NOPD”) at vi, 33 –34 (2011), *available at* http://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf (*within ten months of opening an investigation* of the NOPD for alleged discriminatory police practices and unlawful conduct, making a finding that the

⁸⁶ *Id.* at 11.

⁸⁷ Initial Determination at 35, *Miami Workers Ctr. v. Fla. Dep’t of Econ. Opportunity, Div. of Workforce Servs., Office of Unemployment Comp.*, CRC Complaint No. 12 -FL-048 (Apr. 5, 2013), *available at* http://nelp.3cdn.net/2c0ce3c2929a0ee4e1_wim6i5ynx.pdf.

⁸⁸ *Id.* at 53.

NOPD engages in a pattern or practice of discriminatory policing based on race, ethnicity, gender, and sexual orientation, in violation Title VI and other laws).

See also Letter from Thomas Perez, Asst. Att’y Gen., U.S. DOJ, Civil Rights Division, to John W. Smith, Dir., N.C. Admin. Office of the Courts at 1, 4 (Mar. 8, 2012), *available at* http://www.justice.gov/sites/default/files/crt/legacy/2012/03/08/030812_DOJ_Letter_to_NC_AOC.pdf (*within five years* of the complaint making a finding, among others, “*after a comprehensive investigation* that [North Carolina state court’s] policies and practice discriminate on the basis of national origin, in violation of [Title VI and other] federal law, by failing to provide limited English proficient (LEP) individuals with meaningful access to state courts proceedings and operations” and providing that “appropriate enforcement action as authorized by Title VI” and other laws will be initiated if there is non-compliance) (emphasis added).

See also U.S. DOJ, Civil Rights Division, Investigation of Shelby County Juvenile Court (2012), *available at* <http://njdc.info/wp-content/uploads/2013/12/USDOJ-Report-Investigation-of-the-Shelby-County-Juvenile-Court.pdf> (*within five years* of the complaint, making various findings that the Shelby County Juvenile Court violated Title VI, including by failing to provide constitutionally required due process to children of all races, and administering justice that discriminates against Black children).

- **DOT, Federal Highway Administration (“FHWA”).** *See, e.g.,* Voluntary Resolution Agreement entered into by FHWA and the Texas Department of Transportation (Dec. 17, 2015), *available at* <https://ccharborbridgeproject.files.wordpress.com/2012/02/voluntary-resolution-agreement-signed.pdf> (*within eight months* of an administrative complaint filed by complainants alleging that highway project violated Title VI). In recent testimony to the U.S. Commission on Civil Rights, the Lawyers’ Committee for Civil Rights Under Law described FHWA’s handling of this complaint:

The processing of the Corpus Christi Title VI complaint by the FHWA is in stark contrast to [the] pattern of enforcement [at EPA] and instructive for any federal agency’s Title VI program. The complaint was received by FHWA on March 13, 2015. FHWA began its investigation soon after that and issued a letter accepting the complaint and beginning the investigation on April 3rd. FHWA Office of Civil Rights staff were responsible for the investigation and immediately initiated a proactive investigation, making visits to Corpus Christi several times which included meetings with residents in the impacted neighborhoods to explain the status of the investigation and possible outcomes. FHWA also put the Harbor Bridge Project on hold during

the investigation which created time and leverage for the investigation and negotiations to occur in a timely manner.⁸⁹

- **DOT, Federal Transit Administration (“FTA”).**⁹⁰ *See, e.g.,* Letter from Peter M. Rogoff, FTA, to Steve Heminger, Exec. Dir., Metro. Transp. Comm’n & Dorothy Dugger, Gen. Manager, S.F. Bay Area Rapid Transit Dist. (Jan. 15 2010), *available at* https://www.bart.gov/sites/default/files/docs/BART_MTC_Letter_On_OAC.pdf (*within four months* of receiving a complaint and investigating the failure of the Bay Area Rapid Transit (“BART”) to complete a service equity analysis for a planned federally assisted Oakland Airport Connector Project, making a preliminary finding that “BART failed to conduct an equity analysis for service and fare changes for the Project” and, thus, was “in danger of losing federal funding for the project”).
- **HUD.** *See, e.g.,* Letter from Charles E. Hauptman, Dir., Office of Fair Housing & Equal Opportunity, HUD, to Mr. Roy Bateman, Cmty. Dev. Coordinator, Marin Cnty. Cmty. Dev. Agency -Fed. Grants Division (Dec. 21, 2010) and attachments thereto *available at* <http://www.hud.gov/offices/fheo/library/10-Marin-VCA-final-12-21-2010.PDF> (*within a year* of HUD affirmatively investigating Marin County’s Community Development Block Grant Program, making a preliminary finding of noncompliance because in a county that is majority white, African American and Latino populations were concentrated in two areas).

See also Voluntary Compliance Agreement Between HUD and State of Neb. Dep’t of Econ. Dev., Title VI Review No. 07-11-R002-6, Sec. 504 Review No. 07-11-R002-4, at 2 (2014), *available at* http://www.justice.gov/sites/default/files/crt/legacy/2014/07/02/Voluntary_Compliance_Agreement_HUD_%26_Nebraska_3-2014.pdf (providing that HUD *affirmatively* investigated Title VI compliance and, *within two years*, issued a finding that Nebraska “has not taken reasonable steps to provide meaningful access to federally funded programs for LEP persons”); *see also* Letter from Betty J. Bottiger, Dir., Region VII Office of Fair Hous. & Equal Opportunity, HUD, to Catherine D. Lang, Dep’t Dir., Neb. Dep’t of Econ Dev. (May 31, 2013), *available at* <http://www.fremontne.gov/DocumentCenter/View/2509>.

See Letter from HUD to Rocky Delgadillo, Deputy Mayor for Economic Development, City of Los Angeles (Sept. 25, 2000), *available at* <http://www.cityprojectca.org/ourwork/documents/hud-letter.pdf> (*within a week* of receiving community administrative complaint, HUD required the City of Los Angeles to prepare a full environmental impact statement considering the impact on

⁸⁹ *See* Lawyers’ Comm. for Civil Rights Under Law, Comments to the U.S. Commission on Civil Rights at 5 (Mar. 2, 2016), attached hereto as Ex. 7.

⁹⁰ Notably, while the DOT receives relatively few Title VI complaints, it has been able to resolve the claims expeditiously. U.S. Comm’n on Civil Rights, *supra* note 16, at 63, 64 tbl.3 (reporting that from 1995 to 2001, the DOT’s U.S. Coast Guard had no complaints and the Federal Aviation Administration’s (“FAA”) Office of Civil Rights had four complaints, two of which were resolved in approximately two years).

people of color before HUD would issue any federal funding for a proposed warehouse project, citing Title VI and the President's Executive Order 12898 on environmental justice and health).

- **Interior:** See Letter from Dep't of Interior, to California Governor Arnold Schwarzenegger (Jan. 27, 2010) ⁹¹ (*within seven months* of receiving community administrative complaint under Title VI, Interior wrote to the Governor that proposed actions to close state parks and reduce park services could not be weighted on the basis of race or national origin).
- **Education.** Based on an analysis of 109 Title VI complaints filed with Education's seven regional offices between 2007-2012, of the 100 that were resolved, 58 were the result of early case resolution or voluntary compliance or settlement agreements. ⁹²

Given EPA's record of inaction over many decades, as compared to other federal agencies charged with Title VI enforcement, accountability and recourse to the courts are even more critical for strengthening EPA's compliance and enforcement program than at other agencies.

D. EPA'S Argument that its Proposals are Animated by an Interest in Aligning its Regulations is Unpersuasive.

EPA's argument that its proposals are animated by an interest in aligning regulations with other agencies is unpersuasive. The proposed changes will not, in fact, bring EPA's regulations into alignment with regulations other agencies; instead, EPA has cherry-picked particular provisions while retaining others that diverge from the norm.

EPA attempts to justify its proposal to remove regulatory deadlines in the name of conforming "to the regulatory text of its sister agencies." ⁹³ Yet EPA is not alone in having deadlines and timeframes in its regulations for processing Title VI complaints and conducting compliance reviews. The Department of Energy also has regulatory deadlines, for example. ⁹⁴ In

⁹¹ On file with The City Project.

⁹² On file with the NAACP Legal Defense & Educational Fund, Inc.

⁹³ 80 Fed. Reg. at 77,287; see also U.S. EPA, OCR, PowerPoint Presentation, The U.S. Environmental Protection Agency's Notice of Proposed Rulemaking (NPRM) to Amend its Nondiscrimination Regulations at slide 6 (Dec. 1, 2015), available at http://www.epa.gov/sites/production/files/2015-12/documents/nprm_presentation_final_draft.pdf. ("In order to enable it to create a model civil rights program which can nimbly and effectively enforce civil rights statutes in the environmental context, EPA's regulations will be aligned with those of over 20 other federal agencies.")

⁹⁴ See 10 C.F.R. §1040.104(c) (35-day time frame to determine jurisdiction, notify recipient, and initiate investigation; 90-day time frame from initiation of investigation to advise recipient of preliminary

particular, Department of Energy regulations require the Director to complete a jurisdictional determination and, if appropriate, initiate an investigation with 35 days of receipt of a complaint.⁹⁵ Department of Energy regulations further direct the agency to advise the recipient in writing of preliminary findings and, where appropriate, recommendations for achieving voluntary compliance, within 90 days of initiating an investigation.⁹⁶ Similarly, the Tennessee Valley Authority (“TVA”) has a 10-day time frame from the receipt of the complaint to determine whether the agency has jurisdiction and to initiate the investigation.⁹⁷ TVA shares with EPA the 180-day deadline from the initiation of the investigation to make preliminary findings.⁹⁸

Moreover, the language that EPA proposes is different from the regulations adopted by other agencies. EPA proposes the following regulatory language: “The OCR will make a prompt investigation whenever a complaint indicates a possible failure to comply.”⁹⁹ While a number of other agencies also require a “prompt investigation,” EPA’s proposal diverges in a significant way. Regulations promulgated by the Department of Education and many other agencies require the “responsible Department official or his designee” to make a “prompt investigation whenever a *compliance review, report, complaint, or any other information* indicates a possible failure to comply....”¹⁰⁰ Whereas under these rules, a prompt investigation is triggered when “a compliance review, report, complaint, *or any other information*” shows a potential failure to comply, under EPA’s proposal an investigation is triggered when a complaint, and only a complaint, shows a potential failure to comply – and, significantly, the proposed regulatory

findings, recommendations for voluntary compliance, and give recipient opportunity to request voluntary compliance negotiations).

⁹⁵ *Id.* § 1040.104(c)(1).

⁹⁶ *Id.* § 1040.104(c)(3).

⁹⁷ *See* 18 C.F.R. § 1302.7(c).

⁹⁸ *Id.*

⁹⁹ 80 Fed. Reg. at 77,289.

¹⁰⁰ *See, e.g.,* 34 C.F.R. § 100.7(c) (Dep’t of Educ.) (emphasis added) (“The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part”); *see also* 49 C.F.R. § 21.11 (Dep’t of Transp.); 45 C.F.R. § 80.7(c) (Dep’t of Health & Human Servs.); 24 C.F.R. § 1.7(c) (HUD); 28 C.F.R. 42.107(c) (Dep’t of Justice); 32 C.F.R. § 195.8(c) (Dep’t of Defense); 15 C.F.R. § 8.10(a) (Dep’t of Commerce); 6 C.F.R. § 21.11(c) (Dep’t of Homeland Security); 43 C.F.R. § 17.6(c) (Dep’t of Interior); 29 C.F.R. § 31.7(c) (Dep’t of Labor); 22 C.F.R. § 141.6(c) (Dep’t of State); 38 C.F.R. § 18.7(c) (Dep’t of Veterans Affairs).

language omits the possibility that “any other information” might trigger the investigation.¹⁰¹ EPA’s proposal is significantly weaker and isn’t “aligned” with the regulations of other agencies.

There are also other significant differences between EPA’s regulations and the regulations of other agencies that will remain untouched by EPA’s rulemaking, which undermine EPA’s claim that the proposed rulemaking is motivated by an interest in alignment. Notably, EPA does not categorically separate regulatory provisions related to Title VI from provisions applicable when processing complaints of discrimination under other federal laws. For example, HUD’s Title VI regulations, located at 24 C.F.R. Part 1, specifically apply to Title VI, and as such they are titled “Effectuation of Title VI of the Civil Rights Act of 1964.” Other agencies that have this identical regulatory format include the Department of Education,¹⁰² the Department of Transportation,¹⁰³ the Department of Health and Human Services,¹⁰⁴ the Department of Defense,¹⁰⁵ the Department of Commerce,¹⁰⁶ the Department of Labor,¹⁰⁷ the Department of State,¹⁰⁸ as well as the Department of Veteran Affairs.¹⁰⁹ EPA’s regulations are certainly not in alignment here; unlike these other agencies, EPA’s Title VI regulations implement not only Title VI but also section 504 of the Rehabilitation Act and section 13 of the Federal Water Pollution Act,¹¹⁰ and prohibit discrimination on the basis of race, color, national or sex, where applicable, by programs or activities receiving EPA assistance.¹¹¹

The chart below, comparing EPA’s Title VI regulations with those promulgated by three other agencies, highlights additional differences that are critical to Title VI enforcement —such as the required assurance and eligibility for restoration of Title VI funding following the termination or suspension of funding. For example, while EPA’s regulations require that applicants submit an assurance that “they will comply with the requirements” and “must also submit any other information that the OCR determines is necessary for preaward review,”¹¹²

¹⁰¹ 80 Fed. Reg. at 77,289 (emphasis added).

¹⁰² 34 C.F.R. pt. 100.

¹⁰³ 49 C.F.R. pt. 21.

¹⁰⁴ 45 C.F.R. pt. 80.

¹⁰⁵ 32 C.F.R. pt. 195.

¹⁰⁶ 15 C.F.R. pt. 8.

¹⁰⁷ 29 C.F.R. pt. 31.

¹⁰⁸ 22 C.F.R. pt. 141.

¹⁰⁹ 38 C.F.R. pt. 18.

¹¹⁰ 40 C.F.R. § 7.10.

¹¹¹ 40 C.F.R. pt. 7 (Subpart B).

¹¹² 40 C.F.R. § 7.80(a)(1).

these requirements depart substantively from DOT's provision. DOT's regulations require assurance that the program will be "conducted" or the facility will be "operated" in compliance with "all" requirements "imposed by or pursuant to" the relevant regulations.¹¹³ Without evaluating the nuances of each word, the comparison demonstrates that the language is distinct and that interpretations of these differences may vary significantly. Moreover, DOT requires that states and state agencies applying for continued federal financial assistance also provide or submit an application accompanied by "provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee" that the recipients will comply with such requirements.¹¹⁴ The chart lists a selection of EPA regulations with language that varies from Education, DOT, and HUD.

Select Regulatory Differences: EPA Compared to HUD, DOT & Dep't of Ed.

	EPA	Education	HUD	DOT
Application	<i>"Applicability"</i> 40 C.F.R. 7.15 <i>-Does not list instances where the part does NOT apply</i>	"Application of this Regulation" 34 C.F.R. 100.2 - Lists instances where the part does NOT apply	"Application of Part 1" 24 C.F.R. 1.3 - Lists instances where the part does NOT apply	"Application of this Part" 49 C.F.R. 21.3 - Lists instances where the part does NOT apply
Compliance information	<i>"Requirements for Applicants and Recipients" (Subpart D) → "Recipients"</i> Compare 40 C.F.R. 7.85(a)	"Compliance Information" 34 C.F.R. 100.6	"Compliance Information" 24 C.F.R. 1.6	"Compliance Information" 49 C.F.R. 21.9
Assurances	<i>"Requirements for Applicants and Recipients" (Subpart D) → "Applicants"</i>	"Assurances required" 34 C.F.R. 100.4 - Entire provision	"Assurances required" 24 C.F.R. 1.5 - Entire provision	"Assurances required" 49 C.F.R. 21.7 - Entire provision

¹¹³ 49 C.F.R. § 21.7(a).

¹¹⁴ *Id.* § 21.7(b).

	<p><i>40 C.F.R. 7.80(a)</i></p> <p><i>“Applicants for EPA assistance shall submit an assurance with their applications stating that, with respect to their programs or activities that receive EPA assistance, they will comply with the requirements of this part. Applicants must also submit any other information that the OCR determines is necessary for preaward review. The applicant's acceptance of EPA assistance is an acceptance of the obligation of this assurance and this part.”</i></p>	outlining detailed information on assurances	outlining detailed information on assurances	outlining detailed information on assurances
Hearings	<p>Lacks specific provision related to hearings</p> <p>Compare 40 C.F.R. 7.130</p>	Contains specific provisions related to hearings, such as right to counsel, procedures, evidence and	Contains specific provisions related to hearings 24 C.F.R. 1.9; 24 C.F.R. Part 180	Contains specific provisions related to hearings, such as right to counsel, procedures, evidence and

		record 34 C.F.R. 100.9		record 49 C.F.R. 21.15
Eligibility for funds/post-termination	<p><i>“Procedure for regaining eligibility”</i></p> <p><i>An applicant or recipient whose assistance has been denied, annulled, terminated, or suspended under this part regains eligibility as soon as it:</i></p> <p><i>(1) Provides reasonable assurance that it is complying and will comply with this part in the future, and</i></p> <p><i>(2) Satisfies the terms and conditions for regaining eligibility that are specified in the denial, annulment, termination or suspension order.</i></p> <p>40 C.F.R. 7.135</p>	<p>(g) Post-termination proceedings.</p> <p>(1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.</p> <p>34 C.F.R. 100.10</p>	<p>Does not contain a procedure in Part 1 (Title VI)</p>	<p>(g) Post termination proceedings.</p> <p>(1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.</p> <p>49 C.F.R. 21.17</p>

As this chart demonstrates, with respect to its proposed rulemaking, EPA has selectively chosen certain language to modify, particularly provisions that prescribe time frames for agency action, purportedly to bring EPA into alignment with other agencies also charged with implementing Title VI. However, if EPA's goal were to align its regulations with other agencies, then the proposed rulemaking would be both under and over-inclusive. If EPA's purpose were truly to bring its regulations into alignment, many other modifications to its regulations would have to be made with regard to the regulatory language and the organization of numerous provisions. Instead, EPA cherry-picked, attempting to make only carefully selected changes.

E. EPA's Proposal to Amend its Regulations to Clarify its Affirmative Authority is Unnecessary.

EPA is proposing to amend § 7.85(b) by removing the language, "where there is reason to believe that discrimination may exist in a program or activity receiving EPA assistance" in order to clarify that it has affirmative authority to collect compliance data.¹¹⁵ Through this rule, EPA intends to require recipients to submit compliance reports unrelated to complaint investigations or compliance reviews, but seeks comments on its proposed phased approach to conducting compliance reviews and whether to postpone implementation of provisions governing compliance reports until there are final guidance documents in place related to this process.¹¹⁶ While we support EPA's endeavor to strengthen its authority to collect information and ensure compliance, the agency already has the affirmative authority under existing regulations to collect data and conduct pre- and post-award compliance reviews. 40 C.F.R. §§ 7.85, 7.110, and 7.115. As such, EPA should immediately start utilizing this authority, rather than phase in compliance reviews or delay any further in anticipation of any clarification or new guidance.

¹¹⁵ 80 Fed. Reg. at 77,287.

¹¹⁶ *Id.* at 77,286–87; *see also* EPA Staff Draft, EPA-HQ-OA-2013-0031 at 11 (Dec. 1, 2015) ("EPA does not intend to request compliance reports, unrelated to compliance reviews and complaint investigations, from recipients any sooner than 90 days after it has ... finalized the guidance.").

Signatories support the removal of the “reason to believe” language in 40 C.F.R. § 7.85(b), 7.110(a), and 7.115(a) even though “reason to believe” should not be viewed as a significant barrier to requiring recipients to submit additional compliance data or conduct on-site pre or post -award compliance reviews . The “reason to believe” standard does not require definitive evidence of discrimination; instead the inquiry is focused on whether a reasonable person would conclude, based on available information, that discrimination is occurring.¹¹⁷

If EPA goes forward with these clarifications, it should also delete language suggesting that OCR must determine whether information is “necessary” for its review.¹¹⁸ This language plants the seeds for yet more challenges to the collection of compliance information. Removing the requirement that information be “necessary” goes hand in hand with EPA’s proposal to remove the term “reason to believe.” Section 7.85(b) as amended would read:

The OCR may require recipients to submit data and information specific to certain programs or activities to determine compliance or to investigate a complaint alleging discrimination in a program or activity receiving EPA assistance.

If EPA is committed to using its affirmative authority to ensure compliance and move its civil rights program forward, it should also remove the term “necessary.”

We strongly oppose EPA’s proposal to wait for the issuance of guidance documents before requesting compliance reports , given that EPA already has the authority to request compliance reports and given OCR’s poor record of timely producing and finalizing guidance

¹¹⁷ See, e.g., Policy Statement on Discrimination in Lending 59 Fed. Reg. 18,266, 18,271 (Apr. 15, 1994) (describing what constitutes “reason to believe” on lender discrimination in violation of Equal Credit Opportunity Act); see also Black’s Law Dictionary (10th ed. 2014) (defining “reasonably believe” as “[t]o believe (a given fact or combination of facts) under circumstances in which a reasonable person would believe.”).

¹¹⁸ See, e.g., 40 C.F.R. § 7.80(a) (“Applicants must also submit any other information that the OCR determines *is necessary* for preaward review.”) (emphasis added); 40 C.F.R. § 7.85(b) (“*If necessary*, the OCR may require recipients to submit data and information specific to certain programs or activities to determine compliance when there is reason to believe that discrimination may exist. . . .”) (emphasis added).

documents.¹¹⁹ For example, in 1998 EPA issued its “Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits” (“Interim Guidance”) to guide OCR’s implementation and enforcement of Title VI regulations.¹²⁰ The Interim Guidance was never finalized. In June 2000, EPA then released the Draft Revised Guidance for public comment.¹²¹ Despite significant input from the public, the effort to finalize legal standards languished. In 2005, EPA published the “Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs.”¹²² These guidance documents took years to draft and revise, with only the public involvement guidance finalized, in 2006.¹²³ With regard to the legal standards EPA uses to evaluate whether a Title VI violation has occurred, to date EPA has still failed to finalize guidance. At this point, rather than finalizing guidance, EPA has announced its intention to address legal issues in a Civil Rights Compliance Toolkit.¹²⁴

Communities cannot afford yet another delay if EPA waits for guidance documents to be finalized on compliance reports. EPA presently has the authority under 40 C.F.R. § 7.85 to ensure that recipients comply with Title VI, and recipients are already on notice that they may be

¹¹⁹ 80 Fed. Reg. at 77,286–77 (“[T]he EPA does not intend to request compliance reports, unrelated to compliance reviews and complaint investigations, from recipients any sooner than 90 days after it has drafted guidance about such reports, sought stakeholder input on the guidance, put the guidance out for notice and comment, and finalized the guidance.”).

¹²⁰ U.S. Comm’n on Civil Rights, *supra* note 16, at 32–34.

¹²¹ U.S. EPA, EPA’s Title VI – Policies, Guidance, Settlements, Laws and Regulations, <http://www.epa.gov/ocr/epas-title-vi-policies-guidance-settlements-laws-and-regulations###polandguid> (last updated Feb. 19, 2016).

¹²² *Id.*

¹²³ Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 Fed. Reg. 14,207 (Mar. 21, 2006).

¹²⁴ U.S. EPA, Office of Civil Rights, External Compliance and Complaints Program Strategic Plan: Fiscal Year 2015-2020 at 5 (2015), available at https://www.epa.gov/sites/production/files/2015-10/documents/strategic_plan.pdf. EPA has also failed to finalize the Draft Policy Paper on Adversity. See *supra* at 2.

required to submit additional information “specific to certain programs or activities.”¹²⁵ In fact, EPA even acknowledges its affirmative authority in the preamble to the instant proposed rulemaking.¹²⁶ For EPA to have an effective “Model Civil Rights Program” it must immediately effectuate its compliance procedures, rather than phasing them in.¹²⁷

F. EPA Should Establish Clear Data Collection and Reporting Requirements, Which are a Necessary Component of a Robust Title VI Compliance Program.

EPA’s regulations currently require applicants for federal funds to provide both an “assurance” that they will comply with requirements pursuant to EPA’s Title VI regulations and “any other information that the OCR determines is necessary for preaward review.”¹²⁸ These mandates are too vague to provide guidance to recipients as to what constitutes compliance and what type of information should be collected and maintained. EPA should amend 40 C.F.R. §§ 7.110(a) and 7.80 to require that an applicant for EPA financial assistance demonstrate that it has, and is implementing, an effective Title VI compliance program.

EPA has specifically requested comments on what type of information a recipient will be required to collect and report and, particularly, what type of information recipients will be required to include in compliance reports. As a starting point, EPA should compare the level of specificity set forth in FTA’s Circular on Title VI Requirements and Guidelines, Circular, FTA, FTA C 4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients (Oct. 1, 2012), available at http://www.fta.dot.gov/documents/FTA_Title_VI_FINAL.pdf (“FTA Circular”). The Circular contains the following provisions:

¹²⁵ 40 C.F.R. § 7.85(b).

¹²⁶ 80 Fed. Reg. at 77,286 (“These changes reaffirm the agency’s existing authority to use compliance reviews to identify and resolve compliance concerns with recipients of EPA financial assistance to prevent costly investigations and litigation.”).

¹²⁷ Although we urge EPA to finalize a guidance on legal standards and finally reject the rebuttable presumption, lack of clarity about the legal standards cannot and should not be used as an excuse to postpone the exercise of EPA’s affirmative authority and the initiation of compliance reviews. All stakeholders seek greater clarity on EPA’s legal standards, but compliance reviews are no different in this regard than investigations. EPA must finalize guidance on its legal standards to provide recipients with meaningful notice of expectations and, also, to provide clarity for complainants and investigators.

¹²⁸ 40 C.F.R. § 7.80(a)(1).

- Requirement to provide assurances annually, which are posted on FTA’s website.¹²⁹
- Requirement to submit “a Title VI Program,” which must be approved by a responsible governing entity, to the FTA regional civil rights officer once every three years. Recipients must submit documentation that the entity has approved the Program.¹³⁰
- Each “Program” must include particular information, such as the recipient’s Title VI notice to the public notifying the public of the protections afforded against discrimination; a copy of the instructions to the public regarding how to file a Title VI complaint; a list of investigations, complaints or lawsuits related to Title VI filed with the recipient since the last submission; a public participation plan that includes “an outreach plan to engage minority and limited English proficient populations”; and a copy of a plan for providing language assistance, among other things.¹³¹

Significantly, this level of specificity ensures that recipients indeed have a Title VI program and that assurances are not just pro forma.

- Requirements to collect and evaluate demographic information include the race and ethnicity of populations served by the program or activity.¹³²

EPA’s data collection requirements should include these components: robust assurances, with detailed information about Title VI programs – including specific, required information such as complaint procedures; demographic data relevant to the program or activity; and procedures for conducting analysis of whether operations comply with Title VI. All of this information should be updated regularly and be made publicly available.

Tools such as EJSCREEN¹³³ are now readily accessible to recipients to conduct analyses of compliance with Title VI. As EPA’s website states, EJSCREEN “offers a variety of powerful data and mapping capabilities that enable users to access environmental and demographic information, at high geographic resolution, across the entire country; displayed in color-coded maps and standard data reports. These maps and reports show how a selected location compares

¹²⁹ FTA Circular § III.2.

¹³⁰ *Id.* § III.4.

¹³¹ *Id.* § III.4(a).

¹³² *See, e.g., id.* § IV.5 (requirement to collect and report demographic data applicable to transit providers); *id.* § V.2 (requirement to prepare and submit a Title VI program including a demographic profile and demographic maps applicable to states).

¹³³ *See* EPA, EJSCREEN, Frequent Questions About EJSCREEN, <http://www.epa.gov/ejscreen/frequent-questions-about-ejscreen#q1> (last updated Sept. 8, 2015).

to the rest of the nation, EPA region or state.”¹³⁴ Although EJ Screen is a work in progress – for example, EJSCREEN should incorporate data on the distribution of environmental benefits such as park access¹³⁵ – the availability of such online tools allows recipients to more readily access demographic data relevant to their Title VI program.

Moreover, any rulemaking amending provisions regarding data collection, EPA’s compliance program and, the Case Resolution Manual (discussed below) should clarify that a violation of Title VI and its regulations is established when a recipient fails to consider the disparate impact of a program or policy, including but not limited to whether the operation of a permitted facility will have a disparate impact on the basis of race, color or national origin.¹³⁶ Rulemaking and the CRM, Chapter 5 (Compliance Reviews) should explicitly make clear that recipients have an obligation to evaluate whether their actions, policies or practices have an unjustified disparate impact on the basis of race, color or national origin.

II. INTERIM CASE RESOLUTION MANUAL

Signatories to this letter support the release of the CRM because it responds to the need for a more professional, uniform, and standardized approach to handling environmental justice cases. To be clear, we applaud the intent of the CRM to “provide procedural guidance to OCR case managers to ensure EPA’s prompt, effective, and efficient resolution of civil rights cases consistent with science and the civil rights laws.”¹³⁷ Moreover, we are pleased to know that this CRM and subsequent versions will be posted on EPA’s website and also distributed to the public

¹³⁴ *Id.*

¹³⁵ See, e.g., *US EPA Include Park Access in EJSCREEN and Support Equal Access to Parks and Recreation*, The City Project Blog (Jan. 6, 2016), <http://www.cityprojectca.org/blog/archives/41531>; Letter from Claire Robinson, Amigos de los Rios et al., to Gina McCarthy, Adm’r, U.S. EPA & Mustafa Santiago Ali, Sr. Advisor on Env’tl. Justice, (July 14, 2015), available at <http://www.cityprojectca.org/blog/wp-content/uploads/2015/07/USEPA-Public-Comments-20150714-updated-allies.pdf>.

¹³⁶ *S. Camden Citizens in Action*, 145 F. Supp. 2d at 481 (granting plaintiffs’ request for declaratory judgment on this basis); see also Letter from Peter M. Rogoff, Adm’r, Fed. Transit Admin., to Steve Heminger, Exec. Dir., Metro. Transp. Comm’n, & Dorothy Dugger, Gen Manager, S.F. Bay Area Rapid Transit Dist. (Jan. 15, 2010), available at <https://oaklandliving.files.wordpress.com/2010/01/fta-letter-to-mtc-and-bart-on-oakland-airport-connector.pdf> (preliminary results of compliance review revealed failure to conduct equity analysis, putting agency in danger of losing federal funds).

¹³⁷ CRM, *supra* note 63, at ii. Throughout the CRM, there are repeated referrals to the OCR’s intent to have “prompt, effective, and efficient case resolution.” *Id.* at 6, 14, 20, 21, 22, 23, 25, 26, 27.

through its network of Deputy Civil Rights Officials.¹³⁸ This allows stakeholders of environmental justice complaints, including the impacted communities and recipients of federal funds, to review and comment on this CRM and future versions, and to be informed of the procedural guidance for Title VI complaints.

Consistent with this improved transparency, we urge EPA to timely post on its website other documents referenced in the CRM including: (1) templates of its strategic case management plans, investigation plans, requests for information, and investigation reports; (2) letters of insufficient evidence and non-compliance letters of findings; (3) informal resolution agreements and voluntary compliance agreements and any modifications thereto; (4) post- and pre-award compliance reviews; (5) monitoring reports; (6) documents initiating enforcement proceedings; (7) all regulations and other applicable laws referenced in the CRM; and (8) all acknowledgments of receipt of correspondence which could constitute a complaint and the accompanying complaints and supporting documents. Environmental justice communities seeking information about prior complaints or previous Title VI enforcement efforts should not each be required to request such basic information through public records requests. Such a piecemeal approach is both burdensome for communities and inefficient for EPA.¹³⁹

More generally, we support EPA's articulated goal in this CRM to "promote appropriate involvement by complainants and recipients in the External Compliance complaint process," and other processes.¹⁴⁰ In all case resolution proceedings, we urge OCR to engage with impacted community members to the fullest extent. This engagement should include regularly updating complainants and recipients of the status of case investigations. Indeed, in this and other ways specifically identified below, the CRM does not go far enough to bring Title VI process into alignment with principles of environmental justice and to ensure that those who are most affected by discriminatory practices will have timely information and meaningful opportunities to inform decision-making. Thus, we request that EPA modify the CRM, in all ways possible, including those specifically suggested *infra*, to expand the role of complainants in the Title VI case

¹³⁸ *Id.* at ii-iii.

¹³⁹ The Center for Public Integrity has been able to post such materials, which they obtained through Freedom of Information Act requests, within a relatively short time frame compared to how long it is taking EPA to make such materials available online. See Lombardi et al., *supra* note 22. Stakeholders should not have to rely, however, on the Center rather than EPA for up-to-date information.

¹⁴⁰ CRM at 14. Moreover, voluntary compliance agreements contemplate that the OCR may visit community members, among others, to determine whether a recipient has complied with the terms of such an agreement. See *id.* at 29.

resolution process, consistent with the EPA's espoused policies, such as the 2003 Public Involvement Policy, 2006 Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, and 2015 Guidance on Considering Environmental Justice During the Development of Regulatory Actions.¹⁴¹

Below please find comments on specific provisions of the CRM that merit OCR's further consideration.

A. Jurisdiction

The CRM provides that when OCR evaluates whether correspondence is a complaint, it must consider four factors including: "[w]hether [the correspondence] identifies an applicant for, or a recipient of, EPA financial assistance as the entity that committed the alleged discriminatory act."¹⁴² The failure to meet all four factors is a basis for rejecting or referring the correspondence.¹⁴³ The CRM provides that "[d]etermining whether an entity classifies as a recipient of EPA financial assistance may require more complex analysis, including, for example, examining the flow-through of federal funds."¹⁴⁴ To the extent that the determination of whether an entity is a federal funding recipient is complex, the CRM should be revised to reflect that EPA is the appropriate entity to conduct that analysis and should not rely solely on the complainant's jurisdictional analysis. The CRM should make clear that if a complainant fails to identify the recipient(s) that are committing the alleged discrimination or that information is incomplete, EPA must conduct its own analysis to determine whether the actor is a recipient of federal funds. This modification is critical since the identification of an EPA recipient is a basis for rejecting or referring correspondence, even if the other factors are met, including that a complainant has alleged acts that may violate EPA's non-discrimination regulations. The burden

¹⁴¹ U.S. EPA, EPA-233-F-03-004, Introducing EPA's Public Involvement Policy (2003), *available at* <http://nepis.epa.gov/Exe/ZyPDF.cgi/100045RR.PDF?Dockey=100045RR.PDF>; Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 Fed. Reg. 14,207; U.S. EPA, Guidance on Considering Environmental Justice During the Development of Regulatory Actions (2015), *available at* <http://www3.epa.gov/environmentaljustice/resources/policy/considering-ej-in-rulemaking-guide-final.pdf>. All of these policies espouse that both EPA and Title VI recipients provide opportunities for early and meaningful involvement by complainant communities in agency decision-making, as well as transparency in agency decision-making.

¹⁴² CRM at 6–7.

¹⁴³ *Id.* at 7.

¹⁴⁴ *Id.* at 9.